



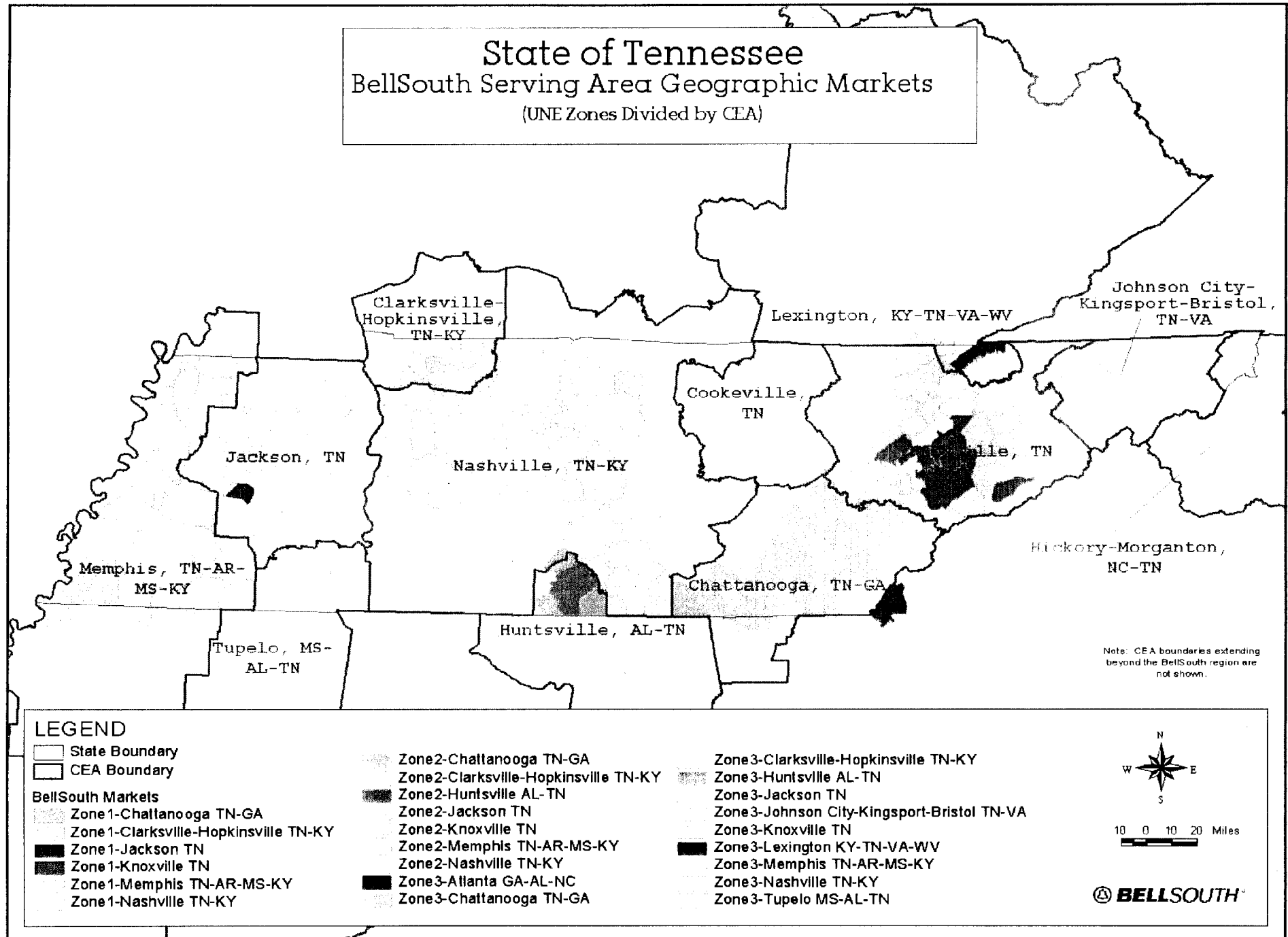
Tennessee Presentation

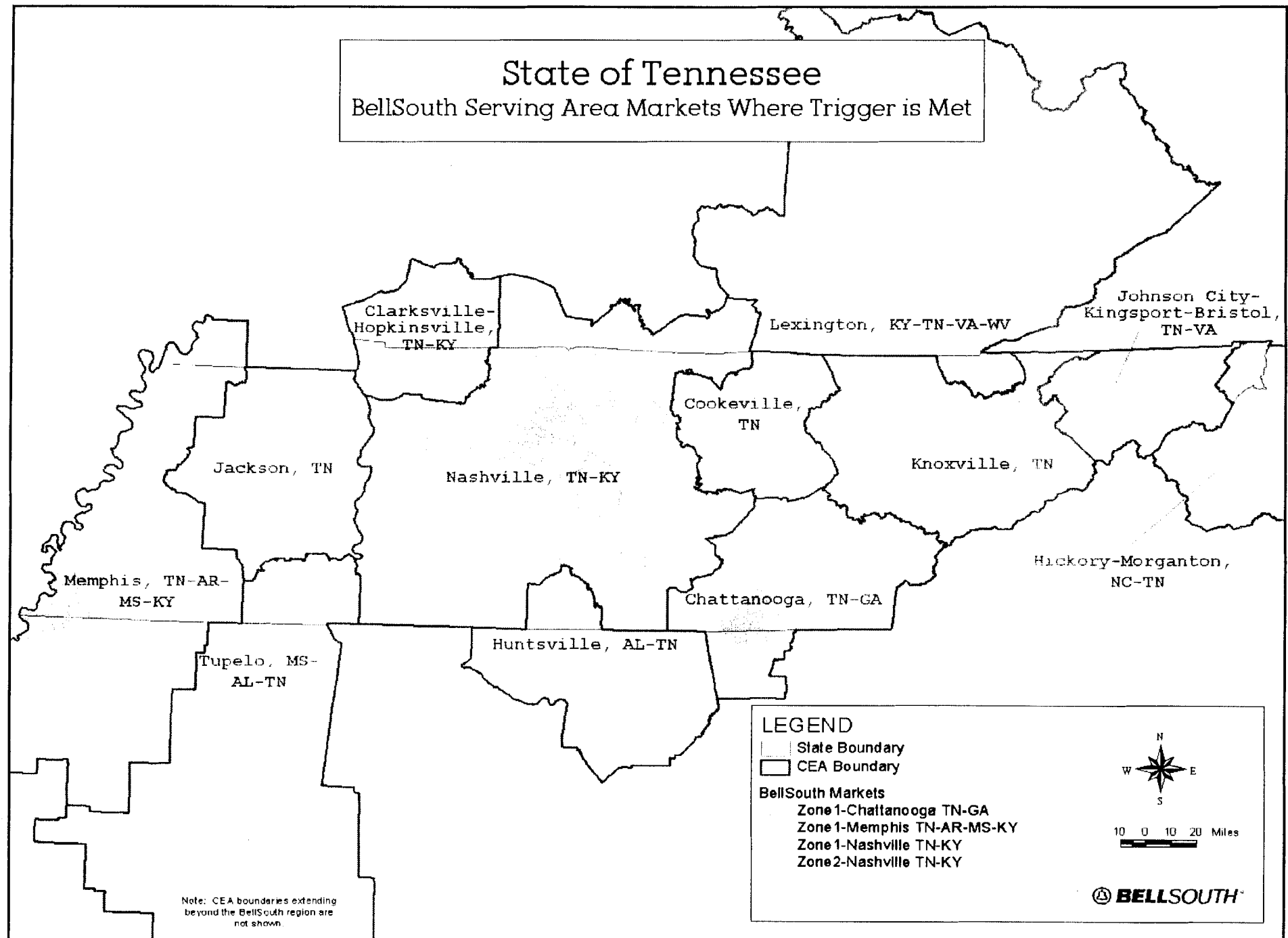
March 30, 2004

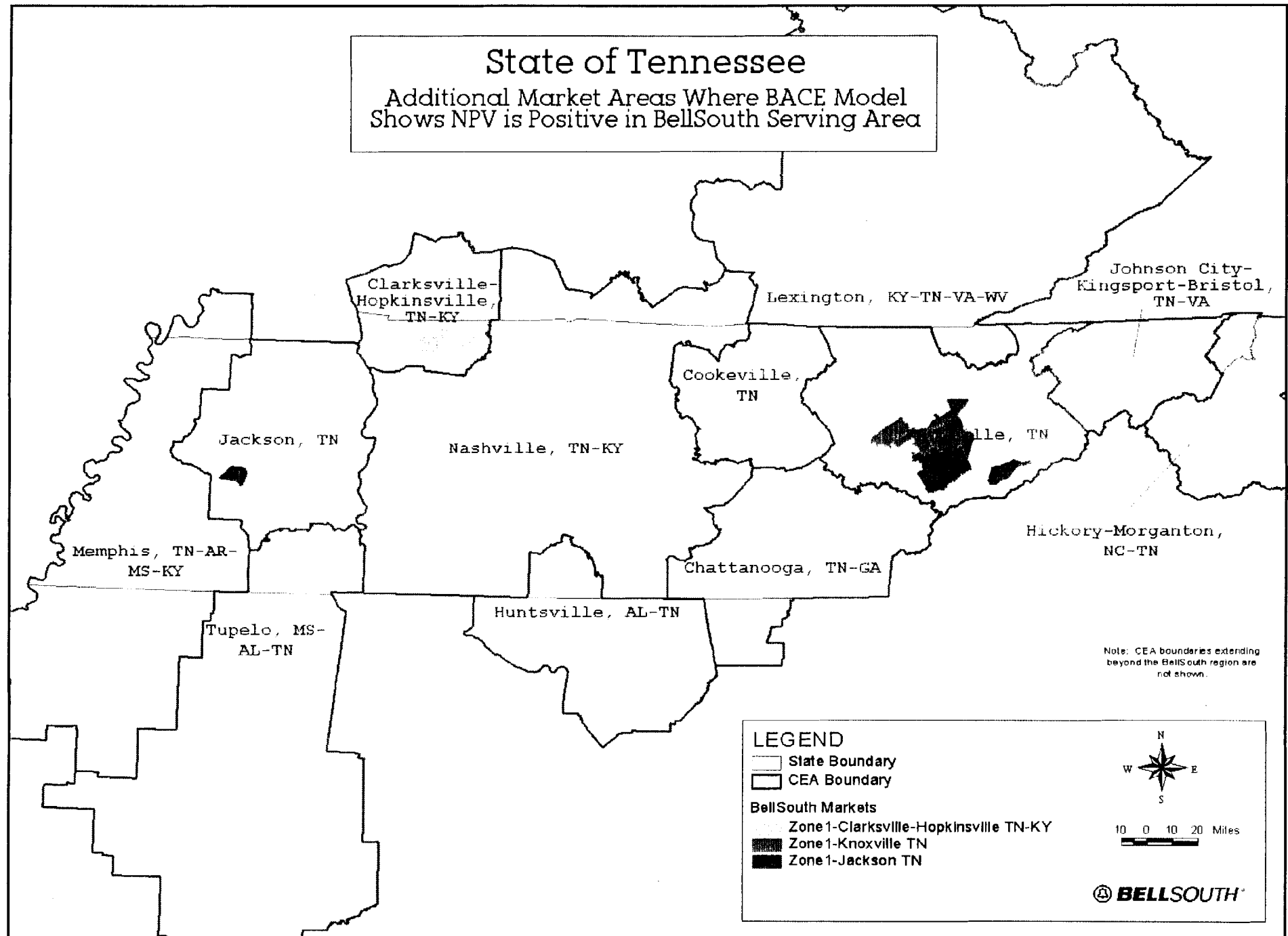
State of Tennessee

BellSouth Serving Area Geographic Markets

(UNE Zones Divided by CEA)







Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S.App.D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued January 28, 2004

Decided March 2, 2004

No. 00-1012

UNITED STATES TELECOM ASSOCIATION,
PETITIONER

v.

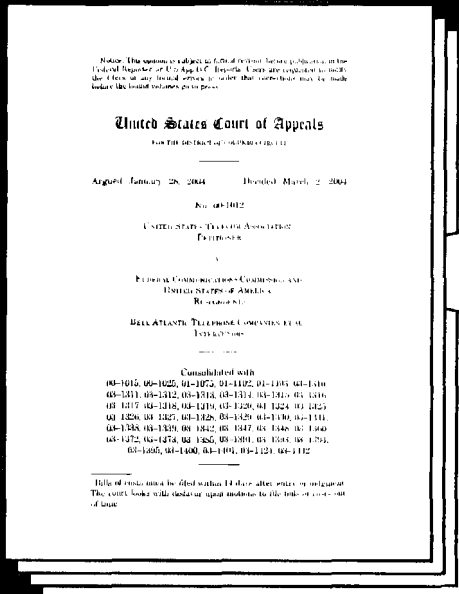
FEDERAL COMMUNICATIONS COMMISSION AND
UNITED STATES OF AMERICA,
RESPONDENTS

BELL ATLANTIC TELEPHONE COMPANIES, ET AL.,
INTERVENORS

Consolidated with
00-1015, 00-1025, 01-1075, 01-1102, 01-1103, 03-1310,
03-1311, 03-1312, 03-1313, 03-1314, 03-1315, 03-1316,
03-1317, 03-1318, 03-1319, 03-1320, 03-1324, 03-1325,
03-1326, 03-1327, 03-1328, 03-1329, 03-1330, 03-1331,
03-1338, 03-1339, 03-1342, 03-1347, 03-1348, 03-1360,
03-1372, 03-1373, 03-1385, 03-1391, 03-1393, 03-1394,
03-1395, 03-1400, 03-1401, 03-1424, 03-1442

Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

> DC Circuit Court Order

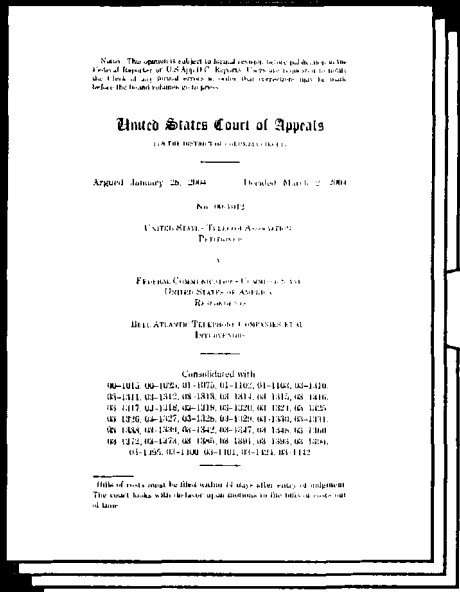


March 2, 2004

We consider first whether the Commission's subdelegation of authority to the state commissions is lawful. We conclude that it is not. We then consider whether the Commission's nationwide impairment determination can nevertheless survive, even without the safety valve provided by subdelegation to the states. We conclude that it cannot. We therefore vacate the Commission's decision to order unbundling of mass market switches, subject to the stay discussed in Part VI.

Pg. 12

> DC Circuit Court Order

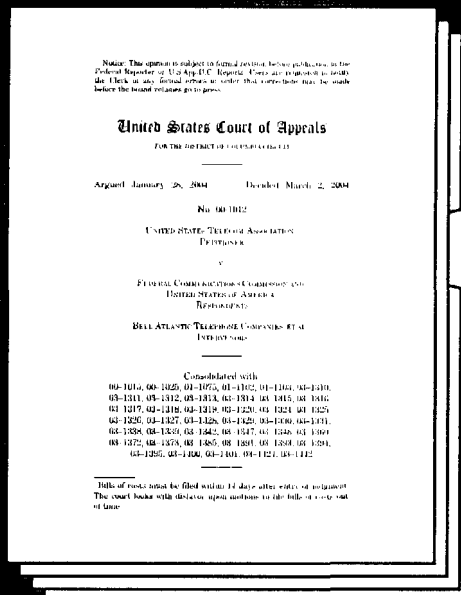


March 2, 2004

While the FCC has sought to characterize the state commissions' role here as fact finding, see Order ¶¶ 186, 493, in fact the Order lets the states make crucial decisions regarding market definition and application of the FCC's general impairment standard to the specific circumstances of those markets, with FCC oversight neither timely nor assured. The Commission's attempted punt does not remotely resemble nondiscretionary information gathering.

Pg. 16

> DC Circuit Court Order

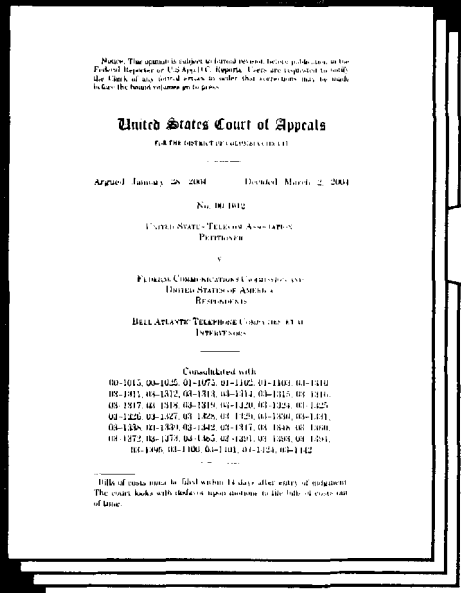


March 2, 2004

We therefore vacate, as an unlawful subdelegation of the Commission's § 251(d)(2) responsibilities, those portions of the Order that delegate to state commissions the authority to determine whether CLECs are impaired without access to network elements, and in particular we vacate the Commission's scheme for subdelegating mass market switching determinations. (This holding also requires that we vacate the Commission's subdelegation scheme with respect to dedicated transport elements, discussed below.)

Pg. 18

> DC Circuit Court Order

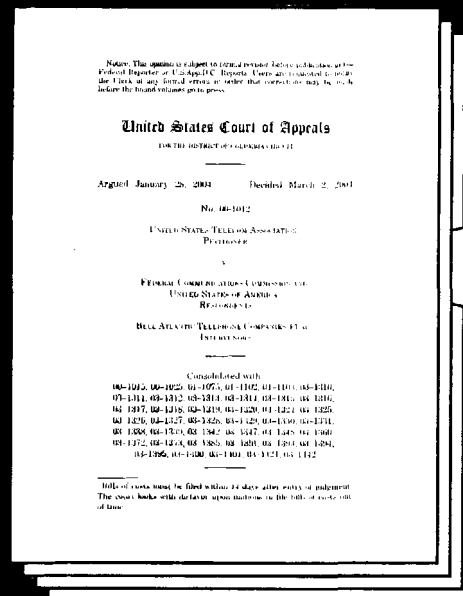


March 2, 2004

Without the (unlawful) innovation of transforming a national impairment finding into a provisional national impairment finding from which state commissions could deviate if they found no impairment under local market conditions, the FCC's Order on mass market switches must stand or fall as a nationwide determination that CLECs are impaired in the mass market without unbundled access to ILEC switches. After reviewing the record, we conclude that we must vacate the (no longer provisional) national impairment finding as inconsistent with our conclusion in *USTA* / that the Commission may not "loftily abstract[] away from all specific markets," 290 F.3d at 423, but must instead implement a "more nuanced concept of impairment," *Id.* at 426.

Pp. 18-19

> DC Circuit Court Order



March 2, 2004

...we do note that in at least one important respect the Commission's definition of impairment is vague almost to the point of being empty. The touchstone of the Commission's impairment analysis is whether the enumerated operational and entry barriers "make entry into a market uneconomic." Order ¶ 84. Uneconomic by whom? By *any* CLEC, no matter how inefficient? By an "average" or "representative" CLEC? By the most efficient existing CLEC? By a hypothetical CLEC that used "the most efficient telecommunications technology currently available," the standard that is built into TELRIC?

Pp. 24-25

> DC Circuit Court Order

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United States Court of Appeals

FOR THE LAST FIVE YEARS, 10% OF THE 2004-2005 BUDGET IS SET

Argued January 26, 2004 Decided March 2, 2004

No. 100,1012

UNITED STATES TELEVISION ASSOCIATIONS
 [PENDING]

2.

FEDERAL COMMISSION ON - FORM NO. 1 (REV. 1-60)
UNITED STATES OF AMERICA
REVENUE (PST)

BELL ATLANTIC TELEPHONE COMPANIES ET AL
INTERVENTIONS

Consolidated with

Consolidated with

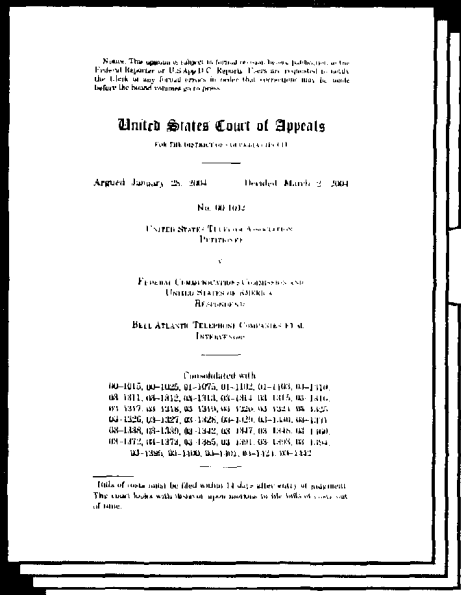
Bills of exchange must be filed within 11 days after entry of judgment. The court looks with disfavor upon motions for the bill of exchange of "late" filing.

...we reaffirm *USTA* /s holding that the Commission cannot ignore intermodal alternatives.

Pg. 25

March 2, 2004

> DC Circuit Court Order



March 2, 2004

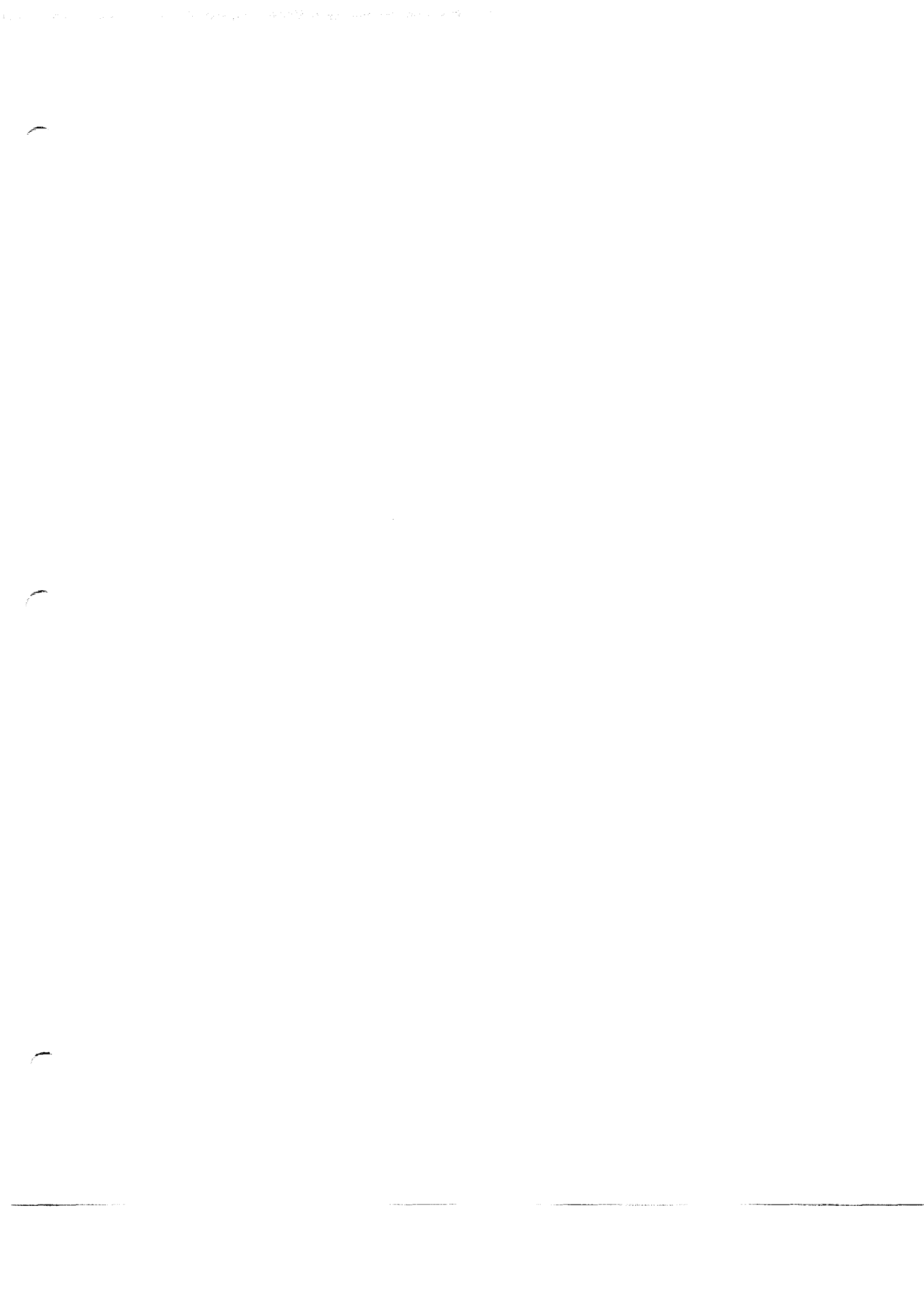
In the name of “universal service,” state regulators have commonly employed cross-subsidies, tilting rate ceilings so that revenues from business and urban customers subsidize residential and rural ones. USTA I, 290 F.3d at 422.

* * *

The Commission’s brief treatment of the issue makes no attempt to connect this “barrier” to entry either with structural features that would make competitive supply wasteful or with any other purposes of the Act (other than, implicitly, the purpose of generating “competition,” no matter how synthetic). The Commission rightly says that if prevailing rates are too low to elicit CLEC entry even with the benefit of UNEs, the unbundling mandate will have no consequences. True enough. But it is no defense of a rule to say that it is harmless in those cases where it has no effect at all; that presumably is true even of the most absurd rule.

The interesting ease is the one where TELRIC rates are so low that unbundling *does* elicit CLEC entry, enabling CLECs to cut further into ILEC revenues in areas where the ILECs’ service is mandated by state law—and mandated to be offered at artificially low rates funded by ILECs’ supracompetitive profits in other areas. If the scheme of the Act is successful, of course, the very premise of these below-cost rate ceilings will be undermined, as those supracompetitive profits will be eroded by Act-induced competition. In competitive markets, an ILEC can’t be used as a piñata.

Pp. 25-26



> Tasks Under TR0

Decide who constitutes a "mass market" customer

TRC-0000

Federal Communications Commission

FCC 03-36

127. Mass market customers consist of residential customers and very small business customers.¹²⁷ Mass market customers typically purchase ordinary switched voice service (Plain Old Telephone Service or POTS) and a few vertical features. Some customers also purchase additional lines and/or high speed data services. Although the cost of serving each customer is low relative to the other customer classes, the low levels of revenue that customers tend to generate create tight profit margins in serving them. The tight profit margins, and the price sensitivity of these customers, force service providers to keep per customer costs at a minimum. Profits in serving these customers are very sensitive to administrative, marketing, and pricing

127. Mass market customers consist of residential customers and very small business customers¹²⁸

telecommunications networks, they are typically very sensitive to reliability and quality of service issues. These customers buy larger packages of services than do mass market customers, and are willing to sign term contracts. These packages may include POTS, data, call routing, and customized billing, among other services. Although serving these customers is more costly than mass market customers, the facts that enterprise customers generate higher revenues, and are more sensitive to the quality of service, generally allow for higher profit margins. The higher profit margins and greater emphasis on quality of service can provide a greater incentive to competing carriers to provision their own facilities, and the higher revenues make it easier to cover the fixed costs of installing such facilities.

129. Large enterprises demand extensive, sophisticated packages of services. Reliability of service is essential to these customers, and they often expect guarantees of service quality. The services they might purchase include an internal voice and data network, local, long distance, and international POTS service to one or multiple locations, provisioning and maintenance of a data network such as ATM, frame relay or X.25, and customized billing. The large revenues these customers generate, and their need for reliable service and specialized equipment to serve them, provide a large incentive to suppliers to build their own facilities where possible, and carry these customers' traffic over their own networks.

(Continued from previous page)

Transferror, and Bell Atlantic Corp., Transferror, For Comments to Transferror's Complaint, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rod 14032, 14088-89, para. 102 (Bell Atlantic GTE Merger Order).

¹²⁸ Very small businesses typically purchase the same kinds of services as do residential customers, and are marketed to, and provided service and customer care, in a similar manner. Therefore, we will usually include very small businesses in the mass market for our analysis. We note, however, that there are some differences between very small businesses and residential customers. For example, very small businesses usually pay higher retail rates, and may be more likely to purchase additional services such as multiple lines, vertical features, data services, and yellow page listings. Therefore, we may include them with other enterprise customers, where it is appropriate in our analysis.

TRO-0267

Federal Communications Commission

FCC 03-34

7. Background

429. We note that an important function of the local circuit switch is as a means of

This four-line limit would include nearly all
residential users and those business users that, because they had fewer than four access lines,
were more similar to residential users than they were to large businesses.¹³¹⁹

the characteristics that distinguish the mass market from medium and large business customers, the Commission found that a significant portion of the mass market could be identified as customers with no more than four access lines. This four-line limit is not inclusive of all

(Continued from previous page)

advocated be used in the past. See *Commissioner Powell Second NPRM Statement* at 3 ("Further, to the extent other facilities-based competitors do not use elements of the incumbent's network, the presence of those competitors in a particular market should be probative in evaluating whether other firms would be impaired in their ability to provide service in that market absent mandated access to the incumbent's elements. It follows directly, then, that assessments of whether an element is necessary to provide service or whether failing to mandate access to that element would impair a new entrant's ability to provide service will vary significantly among different markets, states, and regions."). Where neither of these two triggers is satisfied, we establish specific and mandatory criteria that state commissions must apply to determine whether a market *warrants* self-provisioning of switching. It is difficult to see how we could provide more guidance in this analysis. Indeed, we provide considerably more guidance than we do for the states' analysis of dedicated transport, which again both the dissenters voted to approve.

¹³⁰⁹ As discussed more fully in our discussion above regarding local loop unbundling, no party disputes that competitors need access to incumbent LECs' loops to compete in the mass market. See *infra* Part VI.A.4.a.

¹³¹⁰ See *Local Competition Order*, 11 FCC Red at 15706, para. 412. The line-side facilities include the connection between a loop termination at, for example, a main distribution frame, and a switch line card. Trunk-side facilities include the connection between, for example, trunk termination at a trunk-side cross-connect panel and a trunk card.

¹³¹¹ *UNE Reformed Order*, 15 FCC Red at 3824-22, para. 274.

TRO-0268

Federal Communications Commission

FCC 03-34

residential users and those business users that, because they had fewer than four access lines, were more similar to residential users than they were to large businesses.

433. We define local circuit switching to encompass line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch.¹³¹² The features, functions, and

¹³⁰⁹ *UNE Reformed Order*, 15 FCC Red at 3829, paras. 292-93. Specifically, in density zone one of the top 50 NSAs, incumbent LECs that make the EEL combination available were not obligated to provide unbundled local circuit switching to requesting carriers for serving customers with four or more lines. *Id.* at 3822-33, paras. 276-78.

¹³¹⁰ Letter from Joan Marsh, Director, Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1 (filed Feb. 13, 2003) (AT&T Feb. 13, 2003 *Ex Parte* Letter).

¹³¹¹ The evidence in the record demonstrates that, by the end of 2002, more than ten million residential and small business lines were being served by competitive LECs using unbundled loops combined with unbundled local circuit switching. PACE Jan. 14, 2003 *Ex Parte* Letter at 2; see also George S. Ford, Ph.D., *UNE-Platform, Impairment and Natural Monopoly: Bell Company Estimates of Cost Disparities and Their Consequences* at 1, in Letter from Christopher J. Wright, Counsel for Z-Tel, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Jan. 29, 2003) (Z-Tel Jan. 29, 2003 *Ex Parte* Letter). Unbundled local circuit switching usage is heavily concentrated in residential markets: approximately 70% of such lines serve residential customers. Verizon Unbundled Switching Study at 3. In contrast to the other three BOCs, Qwest claims that the majority of customers in its region that are served by unbundled loops combined with unbundled local circuit switching are business customers. *Id.* This appears, however, to be due to Qwest's offering of CentreX lines (typically used for business customers) on a unbundled basis. See *id.*

¹³¹² As discussed above, UNE-L describes an entry mode where a competitive LEC combines unbundled loops procured from the incumbent LEC with the competitive LEC's own switching and transport network.

¹³¹³ *Triennial Review NPRM*, 16 FCC Red at 22806, para. 55.

¹³¹⁴ *Id.*

¹³¹⁵ 47 C.F.R. § 51.119(c)(1).

> Tasks Under TR0

Decide who constitutes a “mass market” customer

Define the appropriate “geographical market”

TR0-0315

TR0-0314

495. The triggers and analysis described below must be applied on a granular basis to each identifiable market. State commissions must first define the markets in which they will evaluate impairment by determining the relevant geographic area to include in each market.¹⁵³⁶

State commissions have discretion to determine the contours of each market, but they may not define the market as encompassing the entire state. Rather, state commissions must define each market on a granular level, and in doing so they must take into consideration the locations of customers actually being served (if any) by competitors,¹⁵³⁷ the variation in factors affecting competitors' ability to serve each group of customers,¹⁵³⁸ and competitors' ability to target¹⁵³⁹ and serve specific markets economically and efficiently using currently available technologies. While a more granular analysis is generally preferable, states should not define the market so narrowly that a competitor serving that market alone would not be able to take advantage of available scale and scope economies from serving a wider market. State commissions should consider how competitors' ability to use self-provisioned switches or switches provided by a third-party wholesaler to serve various groups of customers varies geographically and should

attempt to distinguish among markets where different findings of impairment are likely. The state commission must use the same market definitions for all of its analysis.¹⁵⁴⁰

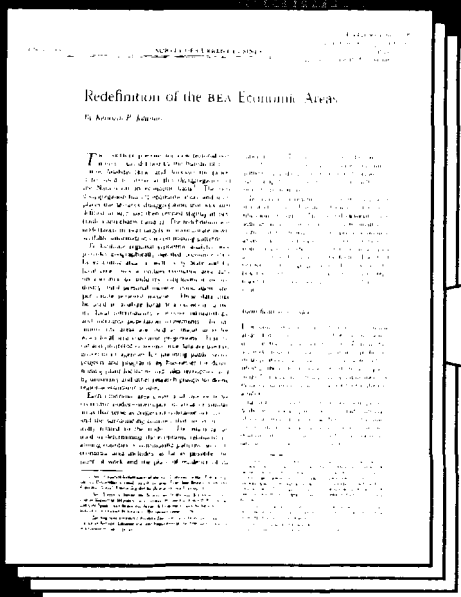
¹⁵³⁶ These markets, for example, franchise territories, do not in their standard customer lists to other vertical markets and usually are not such as data and voice and web.

¹⁵³⁷ CNA document 19745, dated 10/27/11, page 170-18.

¹⁵³⁸ Id.

¹⁵³⁹ The evidence in the record indicates that it may be useful to aggregate large and medium business and government services at a B2B agency or higher. Specifically, if a response has strengths in only the segment of purchasing multiparty responses and a high-cost-to-low, it may serve to aggregate the customer's needs in the customer's position, which is relevant to the fact that the customer is a B2B or a small office.

> Recommended Usage of CEAs



**Redefinition of the BEA
Economic Areas
by Kenneth Johnson,
Survey of Current
Business**

Data for the CEA's can be used by government agencies for administering regulatory programs for small areas and by business for developing marketing programs for small areas.

> Tasks Under TR0

Decide who constitutes a “mass market” customer

Define the appropriate “geographical market”

Apply “bright line” trigger test

> Tasks Under TR0

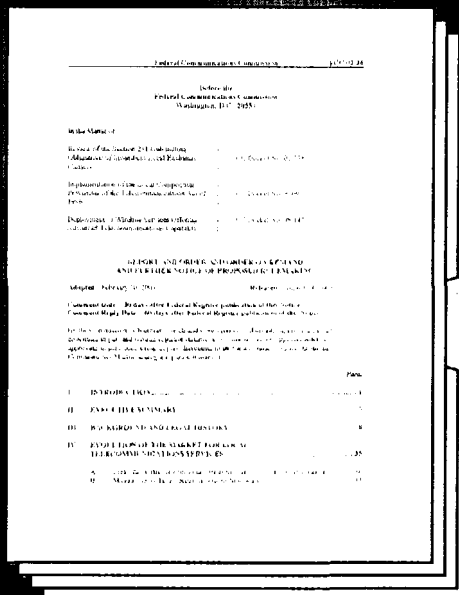
**Apply “bright
line” trigger
test**

462. ...where a state determines that there are three or more carriers, unaffiliated with either the incumbent LEC or each other, that are serving mass market customers in a particular market using self-provisioned switches, the state must find “no impairment” in that market.

> Markets Where Self-Provisioning Trigger Is Met

UNE Zone		CEA
1	Zone 1	Chattanooga
2	Zone 1	Memphis
3	Zone 1	Nashville
4	Zone 2	Nashville

> FCC Self-Provisioning Trigger



47 CFR 51.319(d)(2)(iii)(A)(1)

“To satisfy this trigger a state commission must find that

- **three or more competing providers**
- **not affiliated with each other or the incumbent LEC,**
- **including intermodal providers of service comparable in quality to that of the incumbent LEC,**
- **each are serving mass market customers in the particular market**
- **with the use of their own local switches.”**

> Markets Where Self-Provisioning Trigger Is Met

UNE Zone		CEA	Number of CLECs
1	Zone 1	Chattanooga	4
2	Zone 1	Memphis	3
3	Zone 1	Nashville	5
4	Zone 2	Nashville	3

> Tasks Under TR0

Decide who constitutes a “mass market” customer

Define the appropriate “geographical market”

Apply “bright line” trigger test

Apply “potential deployment” test

> Three Parts of the “Potential Deployment” Test

Evidence of Actual Switch Deployment

510. ...The existence of a competitor that is serving the local exchange mass market with its own switch provides evidence that the mass market can be served effectively.

> Three Parts of the “Potential Deployment” Test

Absence of Operational Barriers

511. ...state commissions should examine whether incumbent LEC performance in provisioning loops, difficulties in obtaining collocation space due to lack of space or delays in provisioning by the incumbent LEC, and difficulties in obtaining cross-connects in an incumbent's wire center, are making entry uneconomic for competitive LECs.

> **Three Parts of the “Potential Deployment” Test**

Absence of Economic Barriers

FN 1579 ...State commissions should determine if entry is economic by conducting a business case analysis for an efficient entrant. This involves estimating the likely potential revenues from entry, and subtracting out the likely costs...

> Three Parts of the “Potential Deployment” Test

**Evidence of
Actual Switch
Deployment**

**Absence of
Operational
Barriers**

**Absence of
Economic
Barriers**

3 Potential Deployment Markets

in addition to...

4 Trigger Markets

> Three Potential Deployment Markets

Zone 1

Clarksville-Hopkinsville

Zone 1

Jackson

Zone 1

Knoxville

> BACE Meets and Exceeds the TR0

	BACE
> Business case analysis	<input checked="" type="checkbox"/>
> Efficient CLEC	<input checked="" type="checkbox"/>
> Granular analysis	<input checked="" type="checkbox"/>
> Uses all likely revenue and costs	<input checked="" type="checkbox"/>
> NPV is the test of impairment	<input checked="" type="checkbox"/>

> CLEC Models Do Not Comply

	<i>BACE</i>	<i>AT&T</i>	<i>MCI</i>
> Business case analysis	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
> Efficient CLEC	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
> Granular analysis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
> Uses all likely revenue and costs	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
> NPV is the test of impairment	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

> BACE Input Development

- > Analysts' Reports & Third-party Research**
- > Academic Literature**
- > Industry Data**
- > Discovery**

> Key Inputs



Market Share

- Consistent with actual CLECs



Retail Prices

- Granular
- Actual CLEC prices in North Carolina
- Per TRO



Churn

- Granular
- CLEC reported rates



Customer Acquisition Costs

- Granular
- CLEC reported rates



G&A

- Powerful statistical analysis
- Results benchmarked to CLEC numbers



Cost of Capital

- Dr. Billingsley's testimony
- Higher than rate AT&T uses in its model

> BACE Is Conservative

- > CLEC Pays Retail Transport Rates**
- > Costs Do Not Decline**
- > One Switch per LATA**
- > Assumes No Existing CLEC Customers**
- > No Revenue from Non-POTS Business Customers**
- > Recurring Revenues Only**
- > Assumes CLEC Resells LD**

> BACE Is Open and Reviewable

> Source Code

> Methods Manual

> User's Guide

> Data Dictionary

> Support Line

> Workshops

> Demonstration Scenario

> User Adjustable

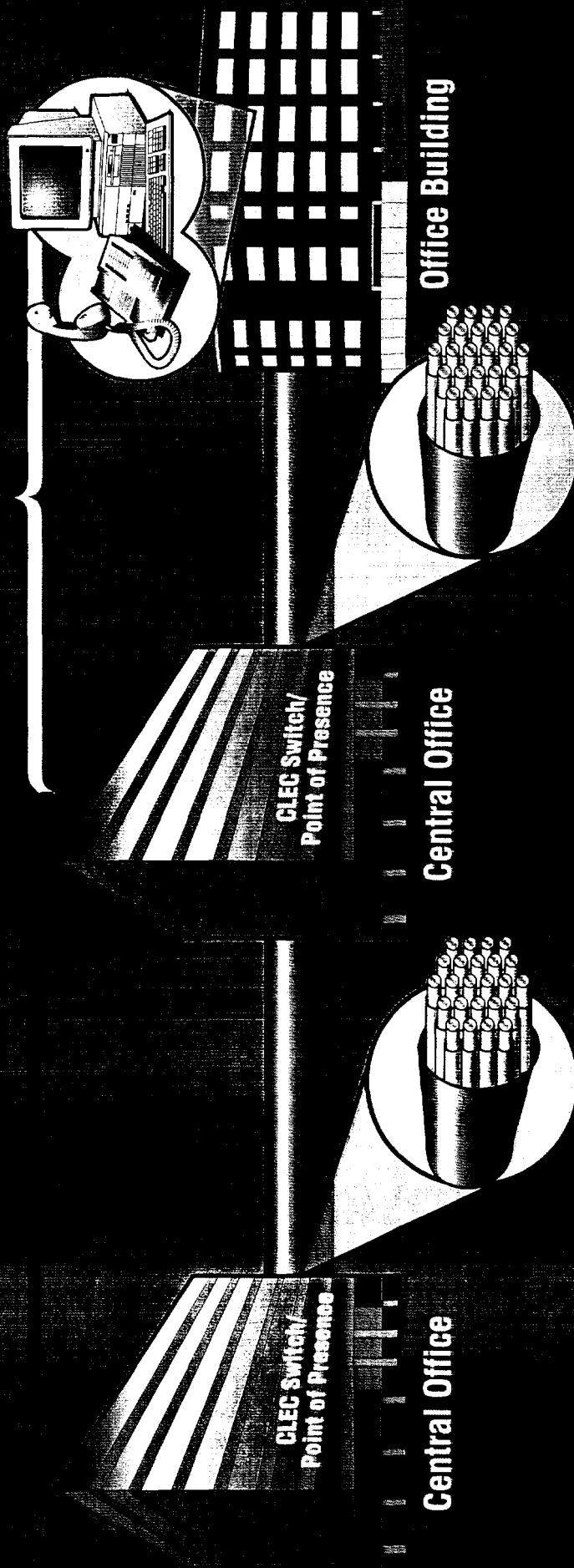
> Seven Markets Where There Is No Impairment

UNE Zone		CEA
1	Zone 1	Chattanooga
2	Zone 1	Memphis
3	Zone 1	Nashville
4	Zone 2	Nashville
5	Zone 1	Clarksville-Hopkinsville
6	Zone 1	Jackson
7	Zone 1	Knoxville

> What Are Loops and Transport?

TRANSPORT

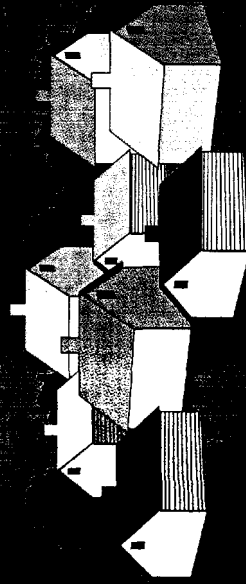
LOOPS



> The FCC Distinguished Between Two Markets

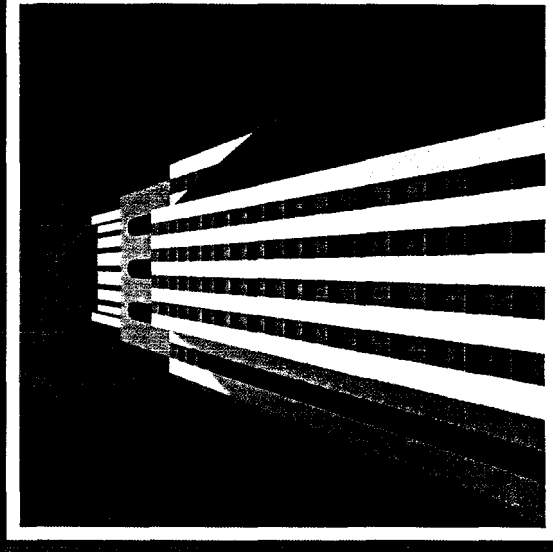
Mass Market

- Residential and very small business customers



Enterprise (High Capacity)

- Medium and large business customers



High capacity loops and transport are under consideration

> Types of Loops and Transport

1. DS1

24 Voice Grade Lines

2. DS3

672 Voice Grade Lines

3. Dark Fiber

Unused Fiber in Ground

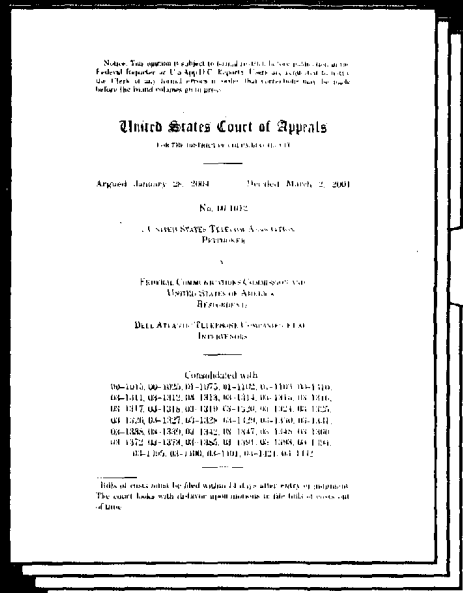
4. OCn

Lit Fiber

> Common Issues Between Loop and Transport

- > OCn presence is relevant evidence that a carrier is operationally ready to provide DS3 and DS1 transport**
- > Lit fiber is relevant evidence of dark fiber**

> DC Circuit Court Order



March 2, 2004

As we explained in the mass market switching context, the Commission may not subdelegate its § 251(d) authority to state commissions. Although the Commission characterizes the states' role as "fact-finding," Order ¶ 394, the characterization is fictitious. It is the states, not the FCC, that determine whether the competitive triggers, or the Commission's numerous and largely unquantified alternative criteria, are satisfied; it is the states that issue binding orders, subject only to the Commission's discretionary review. And, as with mass market switching, the Order itself suggests that the Commission doubts a national impairment finding is justified on this record. *Id.* ¶¶ 360, 394, 398. We therefore vacate the national impairment findings with respect to DS1, DS3, and dark fiber and remand to the Commission to implement a lawful scheme.

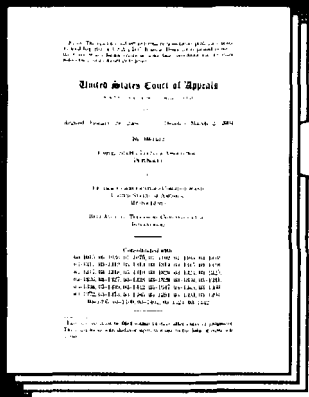
Pp. 27-28

> Triennial Review Order - Paragraph 399

[illegible]

the record indicates that competing carriers have self-deployed significant quantities of local fiber transport facilities.

> DC Circuit Court Order



March 2, 2004

For dedicated transport elements the Commission decided that the appropriate market was not a geographic market (e.g., a Metropolitan Statistical Area ("MSA"), as the ILECs urged, or general customer class), but rather a specific point-to-point route. Thus, for example, the fact that dedicated transport facilities are widely deployed within one MSA does not, in the Commission's view, necessarily preclude a finding of impairment between two specific points within that MSA, if deployment has not satisfied the Commission's competitive "triggers" on that route. We do not see how the Commission can simply ignore facilities deployment along similar routes when assessing impairment. Suppose points A, B, and C are all in the same geographic market and are similarly situated with regard to the "barriers to entry" that the Commission says are controlling. See Order ¶¶ 184 et seq. Suppose further that multiple competitors supply DS1 transport between points A and B, but only the ILEC and one other CLEC have deployed DS1 transport between A and C. The Commission cannot ignore the A-B facilities deployment when deciding whether CLECs are impaired with respect to A-C deployment without a good reason. The Commission does explain why competition on the A-B route should not be *sufficient* to establish competition is possible on the A-C route, Order ¶ 401, but this cannot explain the Commission's implicit decision to treat competition on one route as *irrelevant* to the existence of impairment on the other. Nor does the Commission explain whether, and why, the error costs (both false positives and false negatives) associated with a route-by-route market definition are likely to be lower than the error costs associated with alternative market definitions. While it may be infeasible to define the barriers to entry in a manageable form, i.e., in such a way that they may usefully be applied to MSAs (or other plausible markets) as a whole, the Commission nowhere suggests that it explored such alternatives, much less found them defective.

Pp. 28-29

> Tasks Under TR0

Apply bright-line trigger

Apply potential deployment

Address transition period

> Summary of FCC's Triggers for High-Capacity Loops

Loop Type	FCC's Triggers for Relief at Customer Location Level	
	Self-provisioning	Wholesale
DS1	N/A	2
DS3	2	2
Dark Fiber	2	N/A

> Summary of FCC's Triggers for Dedicated Transport

Capacity	FCC's Triggers for Relief at Route Level	
	Self-provisioning	Wholesale
DS1	N/A	2
DS3	3	2
Dark Fiber	3	2

High Capacity Loops

DS1 Loops - Wholesale trigger

**DS3 Loops - Self-provisioning and
wholesale triggers
Potential deployment**

**Dark Fiber Loops - Self-provisioning
trigger
Potential deployment**

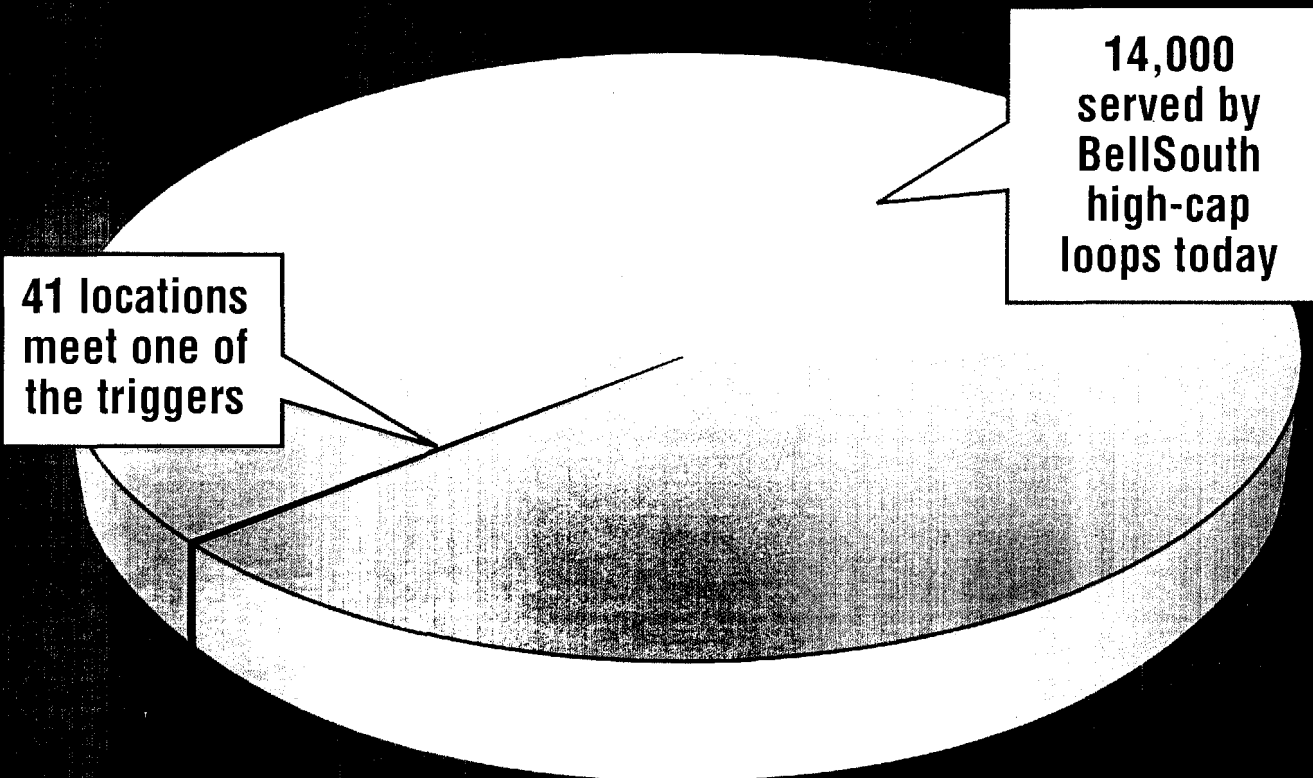
High Capacity Transport

DS1 Transport - Wholesale trigger

**DS3 Transport - Self-provisioning
and wholesale triggers
Potential deployment**

**Dark Fiber Transport - Self-
provisioning and wholesale triggers
Potential deployment**

> High-Cap Loops



> .2% of total locations served by BellSouth's high-capacity loops today

> Transport Facilities

5,700

6000

5000

4000

3000

2000

1000

0

**BellSouth
routes in TN**

**Routes for which
BellSouth seeks
relief - 2%**

124

> Potential Deployment Analysis

- > Applies when self-provisioning trigger not fully satisfied**
- > Complements self-provisioning trigger analysis**
- > Conducted for:**
 - High capacity fiber loops deployed to customer locations (office buildings)
 - Dedicated transport fiber facilities deployed over inter-office transport routes
- > DS3 and dark fiber capacity**

> Summary of Rules for FCC's Potential Deployment

Potential

Applicable

Loops:

DS1

N/A

DS3

✓

Dark Fiber

✓

Transport:

DS1

N/A

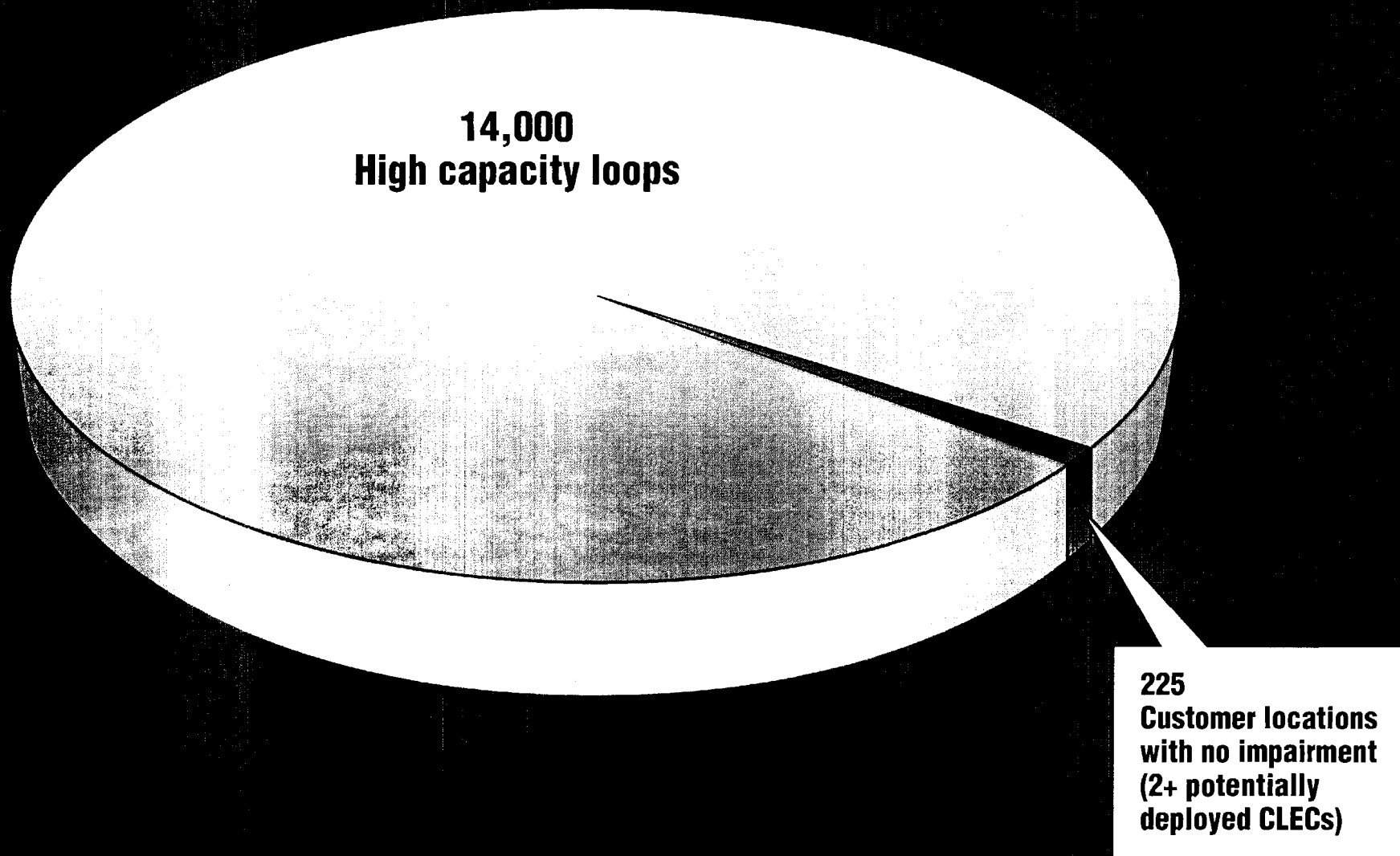
DS3

✓

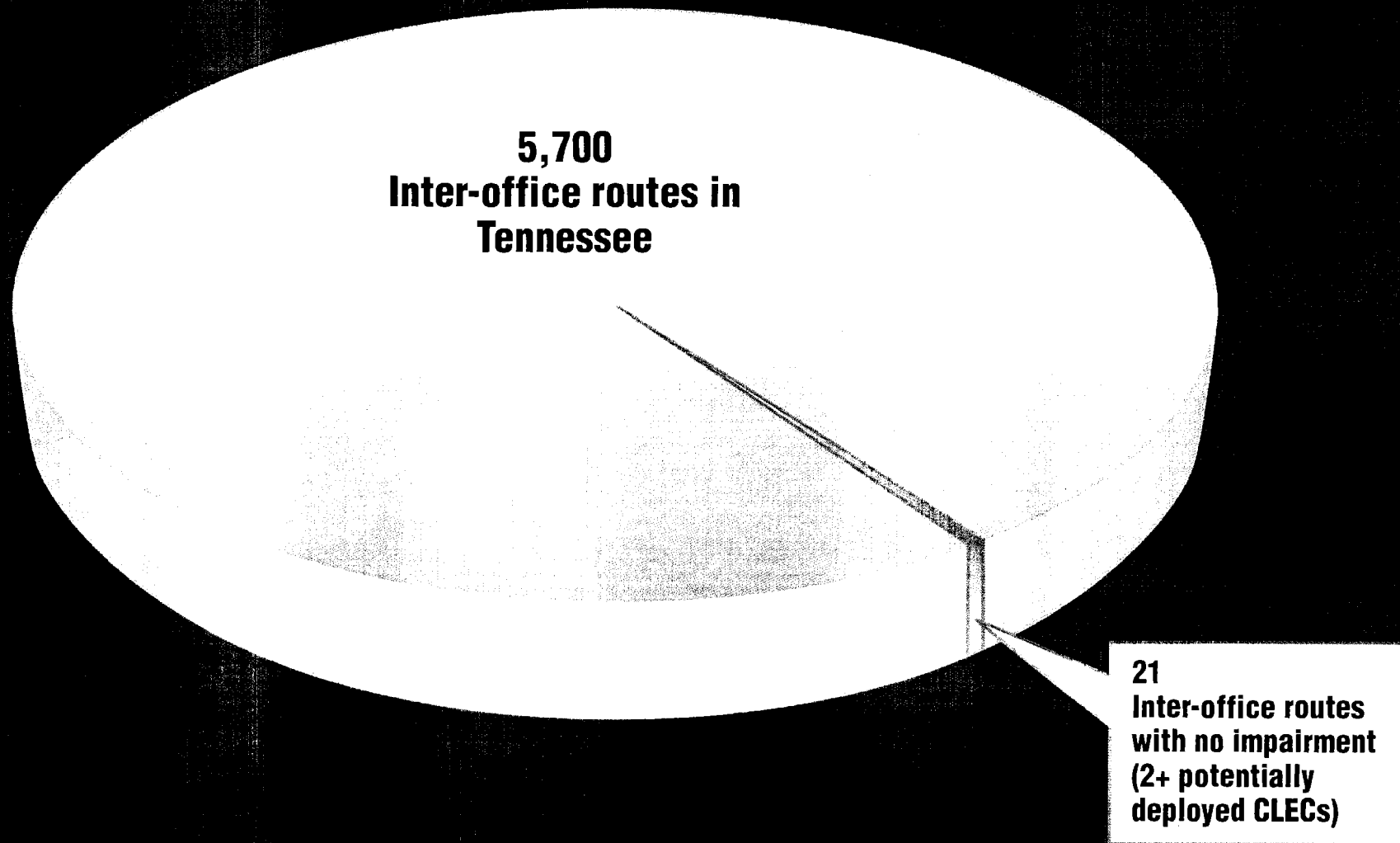
Dark Fiber

✓

> Loop Results - Potential Deployment



> Transport Facilities Results - Potential Deployment



> Triennial Review Order - Paragraph 417

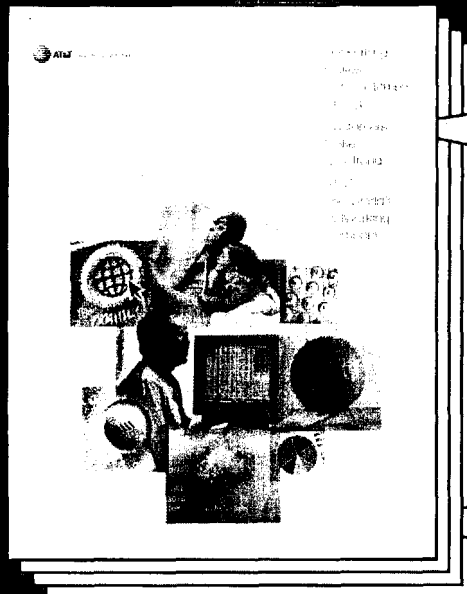
[illegible]

We expect that states will require an appropriate period for competitive LECs to transition from any unbundled transport that the state finds should no longer be unbundled.

> Is a Facility Available for Wholesale?

- > Some CLECs say the loop must terminate at an ILEC central office**
 - Not in the rules
 - Alternative to ILEC wouldn't necessarily go to an ILEC central office
 - Any facility qualifying for self-provisioning also qualifies for wholesale if the CLEC is willing to wholesale
- > Some CLECs say evidence must be presented of willingness to wholesale each loop**
 - Carriers determine to market to other carriers on a company-wide basis
 - Advertisements
 - Analysts reports
 - Indications from discovery
 - Competitive loss info

> AT&T is a Wholesale Provider



**AT&T
Annual Report 2002**

- **Our success in attracting quality wholesale customers has shifted the proportions of retail and reduced-priced wholesale minutes that run on our network.**

Pg. 2

Their services include long distance, international, toll-free and local voice; data and IP services; managed services; and wholesale transport services (sales of services to service resellers).

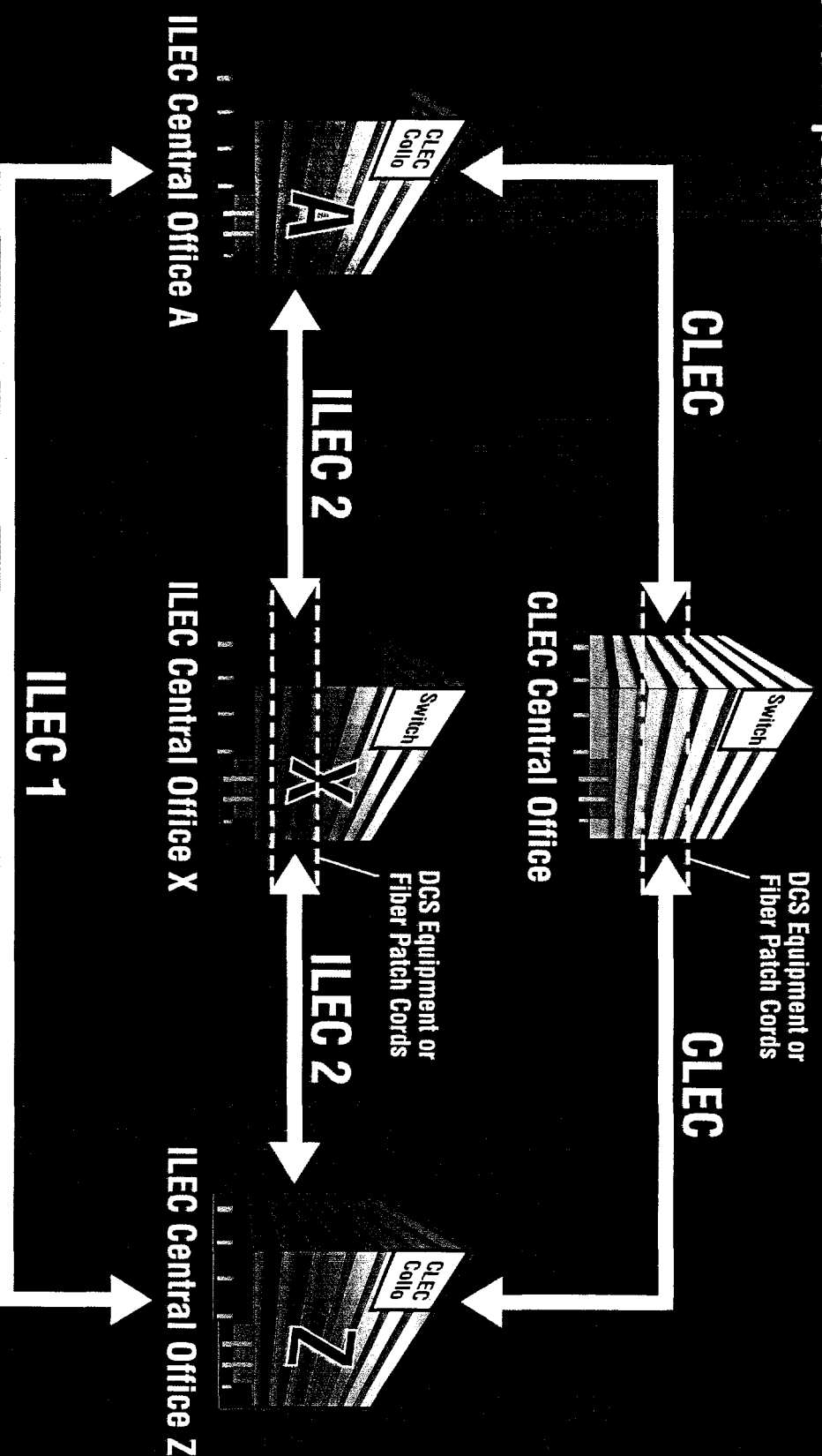
Pg. 21

> Trigger Analysis Looks for *Alternatives* on Specific Routes

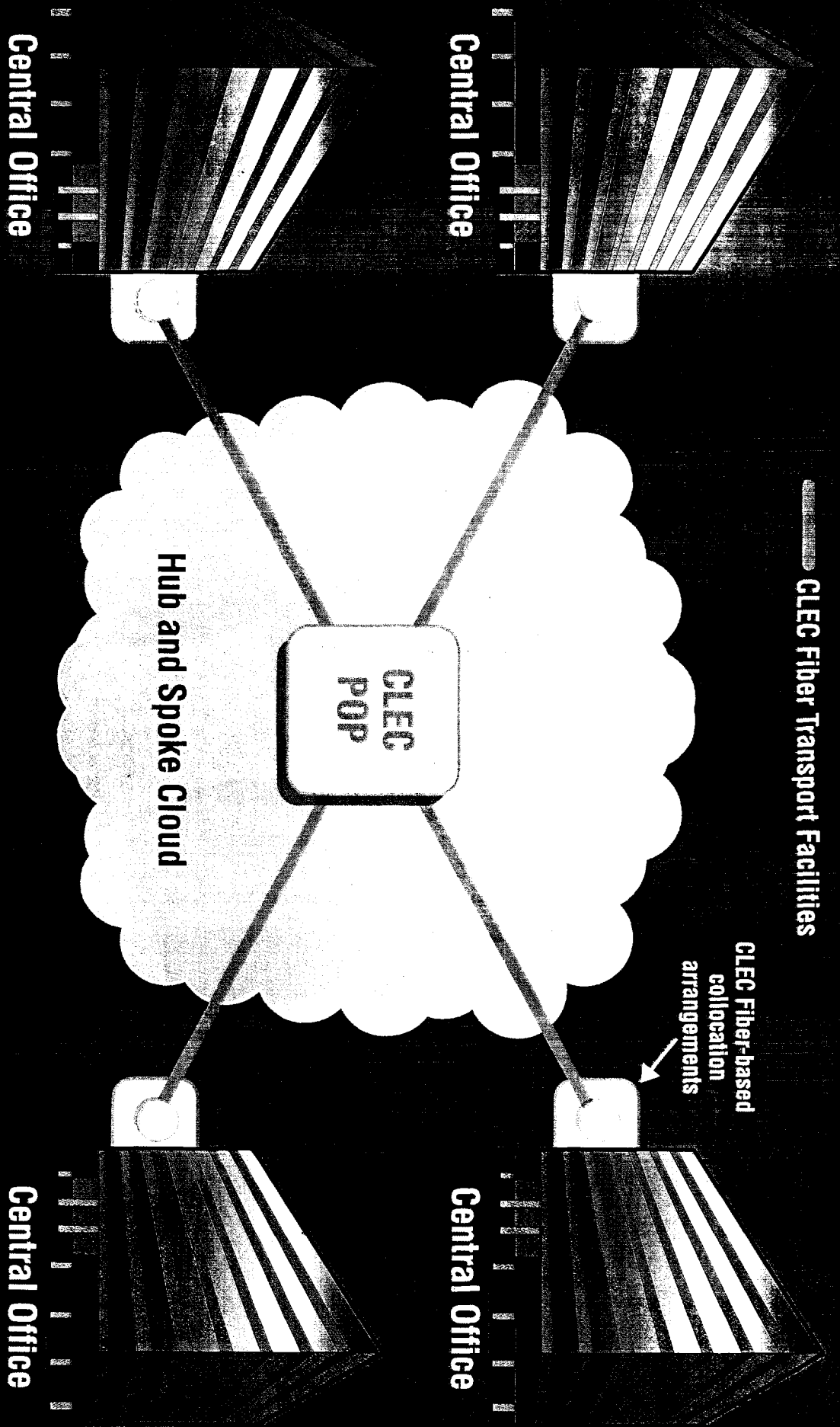
- > Routes are “a transmission path between one of an incumbent LEC’s wire centers or switches and another of the incumbent LEC’s wire centers or switches. A route between two points...may pass through one or more intermediate wire centers or switches.... Transmission paths between identical end points...are the same ‘route,’ irrespective of whether they pass through the same intermediate wire centers or switches, if any.” 51.319(e)**
- > Routes do not have to mirror the LEC’s facilities**
- > Routes may pass through intermediate wire centers or switches**
- > Not the same as the UNE definition**

> Example of a Route

- Three transmission paths between A and Z: two ILEC and one CLEC.
- There is only one "route" as each are transmission paths between identical A and Z points.



> Dedicated Transport



CLEC networks are fully interconnected

> Loop Results

Actual Deployment

Total high capacity loops (any trigger)	41
DS1 loops - Wholesale trigger	23
DS3 loops - Self-provisioning and wholesale triggers	41
Dark fiber loops - Self-provisioning triggers	21

Potential Deployment

High capacity loops - DS3 loops and dark fiber loops	225
--	-----

Total Locations

266

> Transport Results

Actual Deployment

Total high capacity transport - Total routes (any trigger)	124
DS1 transport - Wholesale trigger	81
DS3 transport - Self-provisioning and wholesale triggers	124
Dark fiber transport - Self-provisioning and wholesale triggers	118

Potential Deployment

High capacity transport - DS3 transport and dark fiber transport	21
---	-----------

Total Routes

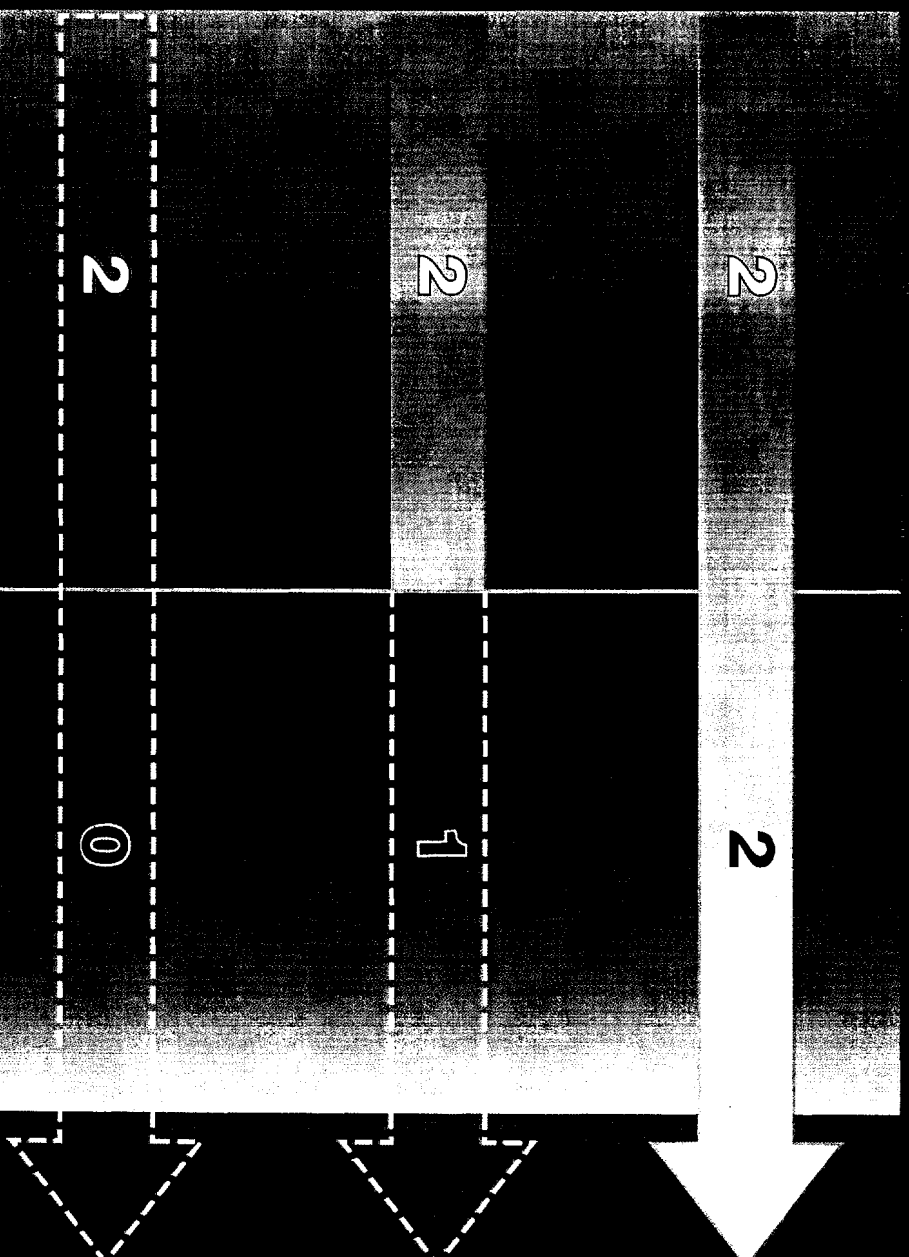
145

> Actual and Potential Deployment: Loops

Total number of CLECs
needed to establish
non-impairment

Number of CLECs
that have actually
deployed loops

Number of CLECs
to pass potential
deployment test



TRIGGER MET

1

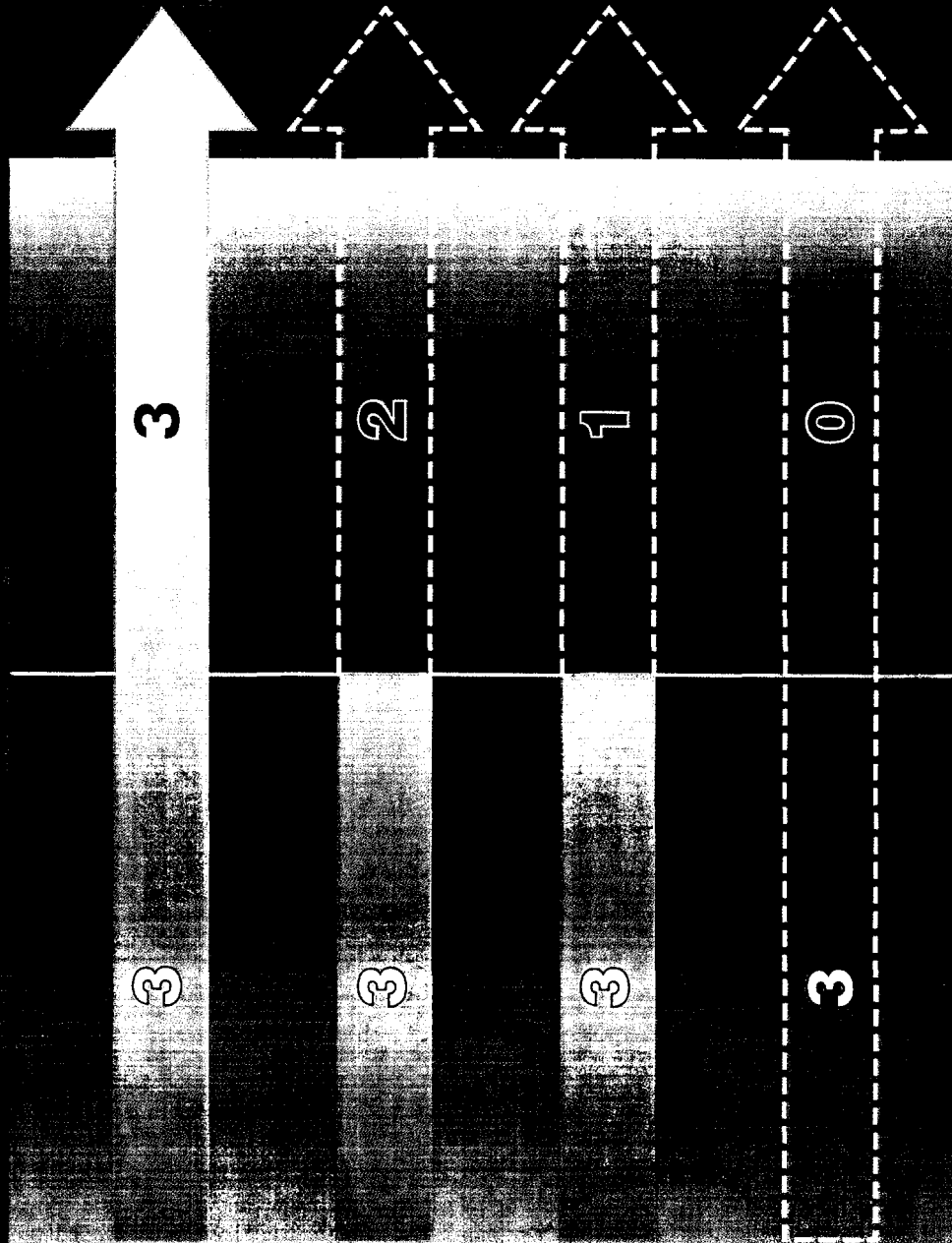
2

> Actual and Potential Deployment: Transport Facilities

Total number of CLECs
needed to establish
non-impairment

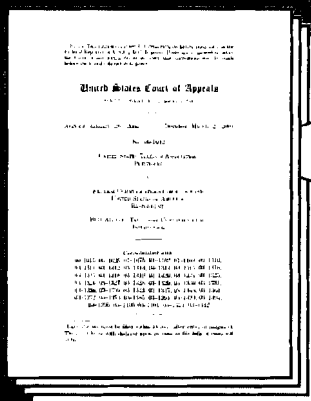
Number of CLECs that
have actually deployed
transport facilities

Number of CLECs
to pass potential
deployment test



☒ TRIGGER MET

> DC Circuit Court Order



March 2, 2004

...the Order makes clear that the national impairment finding was based solely on hot cuts.

* * *

Though certain sections of the Order suggest that impairment due to hot cut costs might be sufficiently widespread to support a general national impairment finding even in the absence of more “nuanced” determinations to be made by the state commissions, Order ¶¶ 459, 470, 473, the Commission at other points concludes that a national finding, without the possibility of market-specific exceptions authorized by state commissions, would be inconsistent with *USTA I*. See Order ¶¶ 186-88, 196, 425, 485, 493. At the very least, these latter passages demonstrate that the Commission’s own conclusions do not clearly support a non-provisional national impairment finding for mass market switches, and thus require us to vacate and remand.

Moreover, we doubt that the record supports a national impairment finding for mass market switches. In another context the Commission has already addressed a kindred issue. Under § 271 of the Act, the subset of ILECs that used to be operating companies of AT&T before its break-up (the Bell Operating Companies, or “BOCs”) can enter the interLATA market (the market for calls between different local access and transport areas) only by showing, among other things, that they are providing CLECs adequate unbundled access to various network elements, including local loops. See Act § 271(c)(2)(B)(iv). The Commission acknowledges that in that context it has in fact found that the BOCs were doing so “in the quantities that competitors demand and at an acceptable level of quality”...

* * *

In none of those proceedings did the Commission find the hot cut process inadequate to meet this standard.

Pp. 19-21

> Tasks Under TRO

Decide who constitutes a “mass market” customer

Define the appropriate “geographical market”

Apply “bright line” trigger test

Apply “potential deployment” test

Approve and implement a batch hot cut process

> BellSouth's Batch Hot Cut Process

> **Operational**

> **Effective**

> **Seamless**

> **Scalable**

> BellSouth's Batch Hot Cut Process Provides Efficiencies

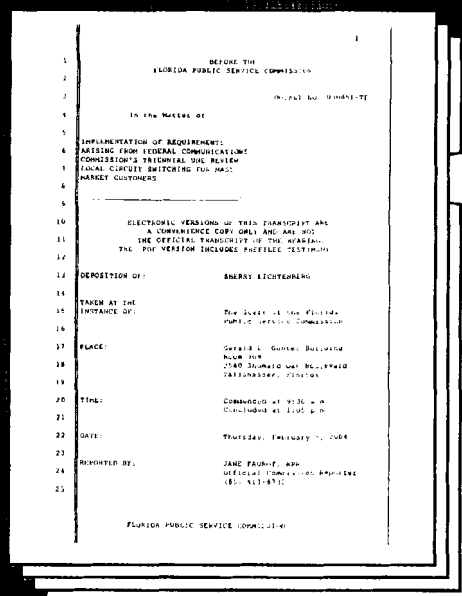
> Preordering

> Project Management

> Batch Ordering

> Batch Provisioning

> MCI's Definition of "Seamless"



**Deposition of
Sherry Lichtenberg
February 5, 2004**

Q. Well, what is your definition of seamless?

* * *

A. ... My definition of seamless is to minimize the disruption to the customer in the very smallest, to the very smallest amount possible.

Pg. 56, Ln. 7, 9-12

1 service?

2 A It could be perceived a little bit differently,
3 Ms. Foshee. As long as the customer notices no
4 interruption in their service, it's invisible to them.
5 That doesn't mean that it's necessarily -- they're not
6 down for 10 seconds.

7 Q So there could be a disruption of -- there
8 could be a minimal disruption of service, and that would
9 constitute a seamless process?

10 A Very, very, very minimal, yes.

11 Q Let me ask it this way. Is ELP a seamless hot
12 cut, in your opinion?

13 A Yes.

14 Q And ELP, as I think we've talked about, is not
15 an issue in this docket; correct?

16 A Correct.

17 Q And at least part of the reason for that is
18 that ELP can't be implemented in nine months; correct?

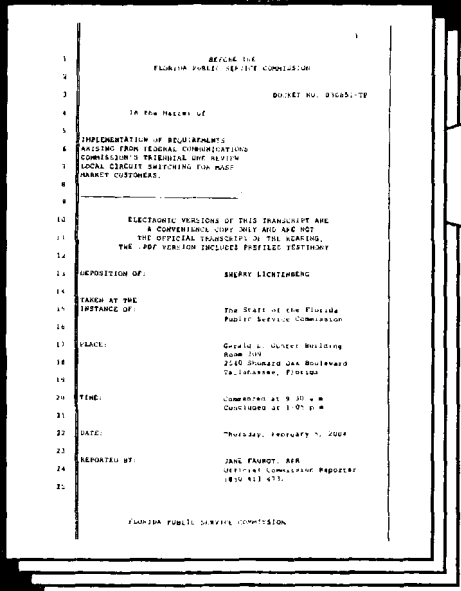
19 A Correct.

20 Q So your view then, by necessity, is that the
21 Florida Commission cannot implement a seamless batch hot
22 cut process in this proceeding; right?

23 A That would be correct.

24 Q So, Mr. Van De Water, that means, does it not,
25 that you're really just arguing that the Triennial

> MCI Has Proffered No Batch Hot Cut Process



**Deposition of
Sherry Lichtenberg
February 5, 2004**

Q. ... Does MCI have a proposed transition batch hot cut process that it wants this Commission to adopt and implement? ...

A. No....

*** * ***

Q. ... Does MCI have a mass market hot cut process that it is asking this Commission to adopt and implement in the nine-month proceeding?

A. No.

Pp. 70-71, Ln. 17-19, 21; 4-7

3795

1 Q Is MCI supporting Verizon's hot cut process in
2 any TRO switching state case?

3 A MCI is --

4 Q Ms. Lichtenberg, if you could answer yes or no,
5 please, and then feel free to explain.

6 A Yes and no. We have agreed with a number of
7 the options that Verizon has put on the table, most
8 notably the use of WPTS and the local number portability
9 trigger. We have concerns about other issues, pieces of
10 the types of migrations, transitions that will not be
11 included.

12 Q Are you supporting Verizon's process in any
13 state TRO switching case, Ms. Lichtenberg?

14 A Not 100%.

15 Q Did you collaborate with SBC about its batch
16 hot cut process?

17 A Yes.

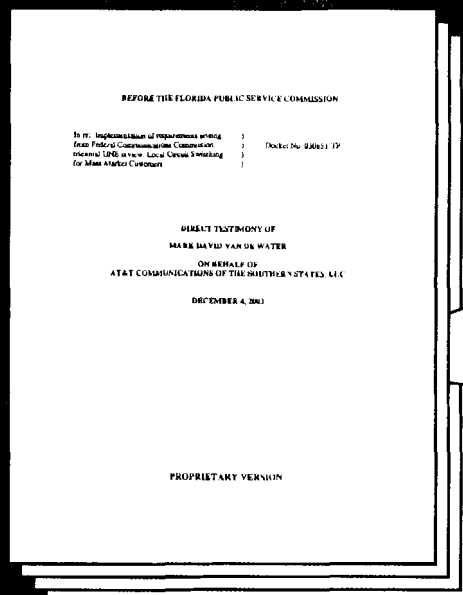
18 Q Are you supporting SBC's process in any state
19 proceeding?

20 A No. We have narrowed the issues from over 100
21 down to a small number. I believe it's close to 20 --
22 to 40. We are continuing to work through them, and
23 those are being litigated now.

24 Q I'm sorry. You narrowed it down to 40 issues?

25 A I believe it has been narrowed down to 40

> Deposition of Mark D. Van de Water



**Deposition of
Mark D. Van de Water
February 11, 2004**

Q. So you agree that this Commission must adopt and implement a batch hot cut process in this nine-month proceeding?

A. Yes.

Q. Okay. Is there a manual hot cut process that AT&T contends could support UNE-L mass market volumes?

A. Not at this time.

Pg. 82, Ln. 13-19

1 Q Okay. And you haven't submitted or suggested
2 any adjustments to the volume estimates provided by
3 Verizon witness Dr. Taylor; isn't that right?

4 A That's also correct.

5 Q Okay. Now, on page 24 of your direct testimony

6 --

7 A I'm there.

8 Q Okay. Is it fair to say that on page 24,
9 you're basically advocating greater automation of the
10 hot cut process?

11 A Yes, I would say that I am. But I'm certainly
12 not making that as a recommendation involving any sort
13 of precondition to a finding of no impairment, but
14 rather something which the network ought to evolve to in
15 the future.

16 Q Okay. So then it's not your position that in
17 the course of this nine-month proceeding, there has to
18 be the adoption of some kind of automated hot cut
19 process?

20 A While it would be nice, that's certainly not
21 our recommendation.

22 Q Okay. So then just to be clear, it's MCI's
23 position that a process can satisfy the TRO even if the
24 work that's done, the actual cutover of the loop is
25 manual?

> BellSouth's Batch Hot Cut Process Works

- > PriceWaterhouseCoopers (PWC) affirmed BellSouth's assertions with an independent third party audit**
- > BellSouth followed its process**
- > BellSouth's process is regional**

> Individual Hot Cut Results Are Excellent

Current performance results based on:



Coordinated Customer Conversions Interval



Hot Cut Timeliness – % Within Interval & Average Interval



Percentage of Troubles Within 7 Days



Average Recovery Time

> Hot Cut Results Are Excellent

Coordinated Customer Conversions

- 2,300+ lines converted (December 2002 - October 2003)
- 99.5% completed in 15 minutes; benchmark 95%
- Average completion time 2 min. 47 sec.

> Hot Cut Results Are Excellent

Coordinated Customer Conversions

- > 2,300+ lines converted (December 2002 - October 2003)
- > 99.5% completed in 15 minutes; benchmark 95%
- > Average completion time 2 min. 47 sec.

Hot Cut Timeliness – % Within Interval & Average Interval

- > 740+ orders (December 2002 - October 2003)
- > 98.7% met standard; benchmark 95%

> Hot Cut Results Are Excellent

Coordinated Customer Conversions

- > 2,300+ lines converted (December 2002 - October 2003)**
- > 99.5% completed in 15 minutes; benchmark 95%**
- > Average completion time 2 min. 47 sec.**

Hot Cut Timeliness – % Within Interval & Average Interval

- > 740+ orders (December 2002 - October 2003)**
- > 98.7% met standard; benchmark 95%**

Percentage Provisioning Troubles in 7 days

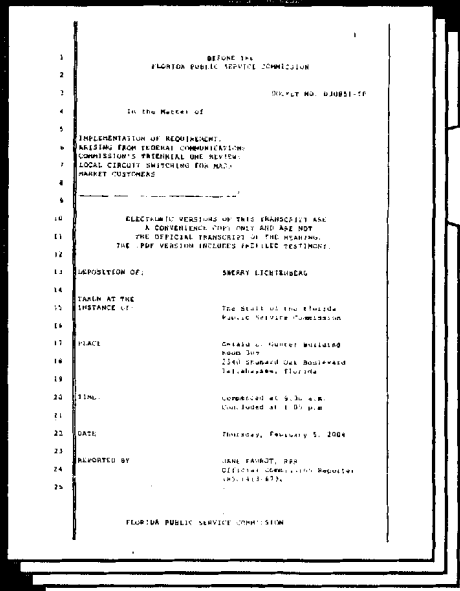
- > 97.8% of circuits had no troubles reported**
- > Measures all reports, not just actual troubles**

Coordinated Customer Conversions Average Recovery Time

- > Approximately 1% of circuits required recovery**

BellSouth Has Performed 16,000 Hot Cuts in 3 Months

> MCI Admits Its Testimony Regarding BellSouth's Batch Hot Cut Performance Is Speculative



**Deposition of
Sherry Lichtenberg
February 5, 2004**

Q. ... MCI, rather, has no firsthand evidence of BellSouth's performance with respect to hot cuts?

A. At this point in Florida, BellSouth – I'm sorry, MCI has no firsthand evidence of BellSouth's performance, that is correct.

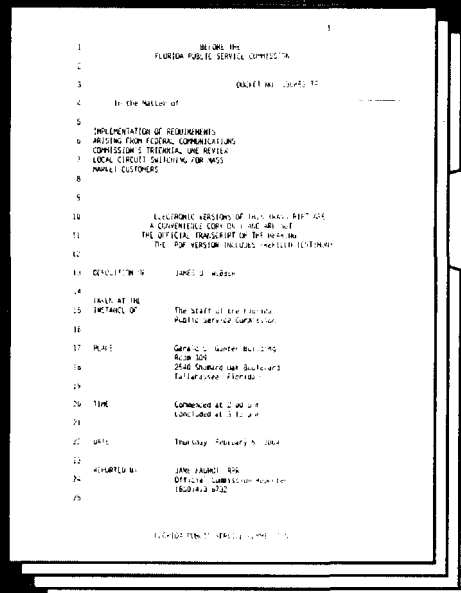
* * *

Q. Okay. So it is speculative, correct?

A. Yes.

Pg. 68, Ln. 14-18; 24-25

> Deposition of James D. Webber



**Deposition of
James D. Webber
February 5, 2004**

Q. ... are you the technical network expert on hot cuts for MCI in this proceeding?

A. I suppose you could describe it that way, yes.

*** * ***

Q. What evidence do you have that BellSouth's hot cut processes does not minimize the time and costs specific to the ILEC's activities?

A. Other than the fact that processes, ordering processes as discussed in Ms. Lichtenberg's testimony and the communication between carriers during the hot cut processes haven't been automated as the way she has described it in her testimony, and the fact that the manual portions of the processes haven't been automated where that is possible, I can't think of anything offhand.

Pp. 13, 27, Ln. 15-18; 4-13

3810

1 will be getting. Right now we have words that say there
2 will be a Web-based notification tool in June. I'm not
3 really sure what that tool is.

4 Q On page 9 of your rebuttal testimony, lines 19
5 and 20, you testified that BellSouth has not provided
6 documentation on how the process, meaning the batch
7 ordering process, will work. That was your testimony;
8 right?

9 A Yes.

10 Q MCI received the UNE-to-UNE bulk ordering user
11 requirements via the Change Control Process, did it not?

12 A Yes.

13 MS. FOSHEE: Mr. Chairman, I have no further
14 questions. Thank you.

15 CHAIRMAN BAEZ: Staff?

16 MR. SUSAC: Staff would like to defer its
17 questions for Ms. Lichtenberg.

18 CHAIRMAN BAEZ: Okay. Oh, I'm sorry,
19 Ms. Kestenbaum.

20 MS. KESTENBAUM: I'm sorry. Yes, I actually
21 have a few questions.

22 CHAIRMAN BAEZ: Okay. You may proceed.

23 CROSS-EXAMINATION

24 BY MS. KESTENBAUM:

25 Q Good evening, Ms. Lichtenberg. And I do only

1 **BEFORE THE**
2 **NORTH CAROLINA UTILITIES COMMISSION**
3 **DIRECT INTERVENOR TESTIMONY OF DENISE C. BERGER**
4 **ON BEHALF OF**
5 **AT&T COMMUNICATIONS**
6 **OF THE SOUTHERN STATES, INC. AND TCG OF THE CAROLINAS, INC.**
7 **DOCKET NO. P-55, Sub 1022**
8 **SEPTEMBER 10, 2001**
9

10 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

11 **A. My name is Denise C. Berger. My business address is 1200 Peachtree Street, NE,**
12 **Atlanta, Georgia 30309.**

13 **Q. PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL**
14 **EXPERIENCE AS THEY RELATE TO ISSUES IN THIS PROCEEDING.**

15 **A. I hold a Bachelor of Fine Arts degree from the University of Southern Mississippi**
16 **and a Master of Business Administration from the University of Houston with an**
17 **emphasis in Marketing and Management.**

18 **I am employed with AT&T as the District Manager for Supplier Performance in**
19 **AT&T's Local Services and Access Management Department for Alabama,**
20 **Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South**
21 **Carolina, and Tennessee. As a district manager, my duties entail managing the**
22 **ongoing performance improvement of AT&T's local services suppliers in the**
23 **Southern Region for all local services AT&T offers. My team is responsible for**
24 **evaluating and managing the ongoing performance improvement of AT&T's**

1 A No. It's more global than that, actually. We
2 agree with the TRO, not just from those two
3 declarations, but from our experiences nationwide when
4 we were doing the UNE loop product. It wasn't just
5 here, and it wasn't just those two documents.

6 Q Well, the facts underlying your testimony, as I
7 understand it, Mr. Van De Water, and as you've testified
8 to and responded in interrogatories, are Denise Berger's
9 271 testimony; right?

10 A That was a response, yes.

11 Q Okay. And when you say consistent with the FCC
12 TRO findings in your presentation, the FCC relied on the
13 Brenner declaration; correct?

14 A I believe that was one of the declarations they
15 did rely on.

16 Q Okay. And the Brenner declaration is the one
17 that AT&T had no facts to support when we asked AT&T to
18 produce them in discovery; right?

19 A That I don't recall, Ms. Foshee.

20 Q Do you have a copy of AT&T's seventh
21 interrogatory responses to BellSouth with you?

22 A I do not.

23 MS. ROSS-BAIN: And if counsel has that and
24 wants to supply it --

25 MR. FOSHEE: May I approach the witness,

3806

1 individual hot cut process works is not relevant to this
2 proceeding; correct?

3 A Yes. I believe that the FCC said the same
4 thing.

5 Q Do you think that testimony filed in the
6 BellSouth 271 case allegedly showing that BellSouth's
7 individual hot cut process doesn't work is relevant to
8 this proceeding?

9 A No. I don't believe that the 271 process,
10 which focused on the UNE-P platform for mass market
11 customers as the way to have competition, provided
12 enough focus on the loop process.

13 Q With respect to scalability, your view is that
14 the definition of scalability is that the hot cut
15 process must be able to handle mass market volumes;
16 correct?

17 A Yes, that is correct.

18 Q And you've defined mass market volumes as the
19 equivalent of the volumes that we see today for UNE-P;
20 correct?

21 A Yes.

22 Q Ms. Lichtenberg, is MCI providing service using
23 UNE loops anywhere in BellSouth's region?

24 A MCI mass markets does not provide a UNE loop
25 product to the residential and small business customer.

1 A I am.

2 Q Now, Mr. Van De Water, with respect to the
3 alleged operational issues you discuss in your
4 testimony, you have no opinion as to whether those are
5 relevant to the triggers analysis; correct?

6 A I am not the trigger witness, no.

7 Q Now, Mr. Van De Water, you testified on page 59
8 of your direct, lines 10 through 11, that if all UNE-P
9 customers are migrated to UNE-L, significant blocking of
10 trunks connected to the tandem or tandem switching,
11 quote, "can be expected." Do you see that testimony?

12 A I'm there.

13 Q You didn't look at BellSouth's PMAP trunk
14 blockage data before you filed this testimony, did you?

15 A No. I didn't need to.

16 Q And you didn't look at BellSouth's traffic
17 management processes; correct?

18 A I didn't need to.

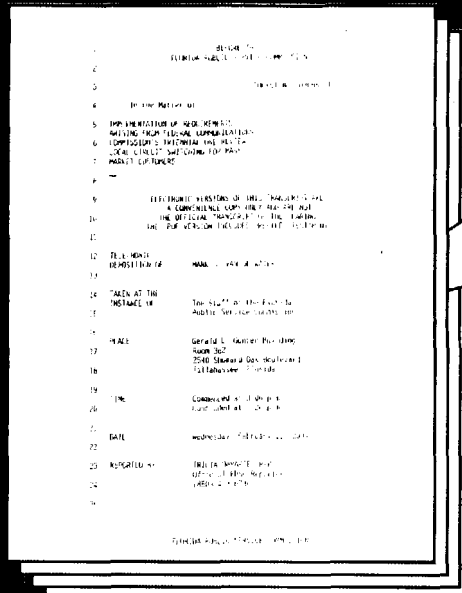
19 Q And you didn't look at BellSouth's trunk
20 augmentation guidelines; correct?

21 A I didn't need to.

22 Q In fact, you had no empirical data to support
23 your conclusion that blockage can be expected, correct?

24 A Again, my experience is what drives this. The
25 traffic will change if everything is going through the

> Deposition of Mark D. Van de Water



**Deposition of
Mark D. Van de Water
February 11, 2004**

Q. Have you ever worked in BellSouth's region?

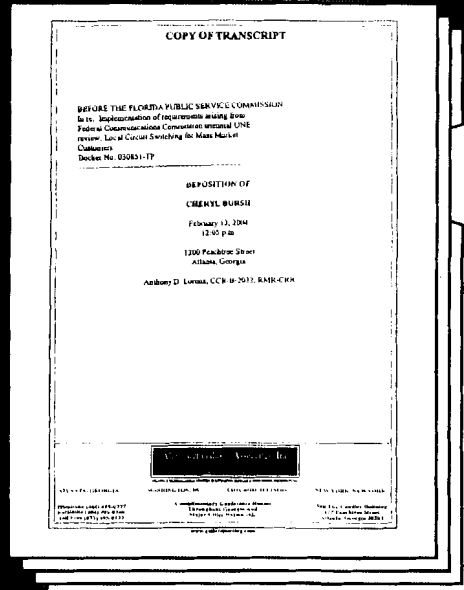
A. No.

Q. So any operational experience you have is not with BellSouth; correct?

A. That is correct.

Pg. 109, Ln. 14-18

> Deposition of Cheryl Bursh



**Deposition of
Cheryl Bursh
February 13, 2004**

Q. Does AT&T have any empirical evidence to suggest that BellSouth is not performing batches on time?

A. Well, we're not doing batch migrations today.

Q. So your answer would be no?

A. No --

Pg. 66, Ln. 5-11

> Deposition of Jay M. Bradbury

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Implementation of requirements arising from Federal Communications Commission's biennial UNE review. Local circuit switching for Mass Market Customers.

DOCKET NO. 030851-TV

TELEPHONIC DEPOSITION OF: JAY M. BRADBURY

TAKEN AT THE INSTANCE OF: The Florida Public Service Commission

DATE: February 18, 2004

TIME: Commenced at 9:15 a.m.
concluded at 12:20 p.m.

LOCATION: 2540 Shumard Oak Boulevard
Tallahassee, Florida

REPORTED BY: ANITA M. PAXEROL, CSR
CP, CM, Notary Public
in and for the State
of Florida at Large.

ACCURATE STENOGRAPHY REPORTERS, INC.
2699-A Remington Green Lane
Tallahassee, Florida 32308
(904) 878-2221

Q. Mr. Bradbury, can you identify any facts to support Ms. Brenner's testimony identified here?

A. I do not have any of those facts with me today, no, sir.

Pp. 83-84, Ln. 24-25; 1-2

**Deposition of
Jay M. Bradbury
February 18, 2004**

> BellSouth's Batch Hot Cut Process Is Scalable

> BellSouth developed force requirements assuming "worst case scenario"

- Used highest monthly inward UNE-P volume encountered in last 37 months
- Used highest monthly inward UNE-L volume encountered in last 37 months
- Assumes BellSouth gains relief in EVERY market in Florida
- Assumes BellSouth and CLECs reach agreement for CLEC to stay on BellSouth's switches in NO market in Florida
- Assumes high rates of "churn" and customer trouble reports

> Even assuming "worst case" load projections, the highest single day hot cut volume (region-wide) is 15,567. BellSouth can meet that level.

> BellSouth's Batch Hot Cut Process Is Scalable

- > BellSouth can hire the required technicians and supervisors**
- > Can find, hire and train them in four (4) months**
- > The highest load volumes will be presented no earlier than August 2005**

3805

1 service using UNE loops?

2 A No.

3 Q Well, how is it, Ms. Lichtenberg, that on the
4 one hand you say there will be an exponential increase
5 in UNE loop volume, and on the other hand say that MCI
6 can't provide service using UNE loops?

7 A We say that if we could make the process work,
8 if we could cover the economic and operational problems,
9 we will begin moving our customers, and so will other
10 CLECs, and so volumes will go up exponentially.

11 Q Ms. Lichtenberg -- I'm sorry. I'm having
12 problems with my mike. Is it your position that if the
13 Commission finds no impairment in BellSouth's 12 trigger
14 markets in this proceeding and makes no other changes,
15 that the exponential increase that you talk about here
16 won't exist?

17 A Yes, but I do need to elaborate on that one.

18 Q Go ahead.













19 A If changes aren't made and no impairment is
20 found, as the panel has described to you today, what you
21 will see, I believe, is the dropping away, the withering
22 away of competition. I hope you will see some UNE loop
23 competition, but I don't know.

24 Q Ms. Lichtenberg, you've also testified that
25 BellSouth's 271 evidence proving that BellSouth's

> BellSouth Has Responded to CLECs' Criticisms

- > During hot cut workshops, CLECs recommended changes.**
- > BellSouth incorporated CLECs' changes to the batch hot cut process.**

> BellSouth Enhancements

-  **After Hours Cuts**
-  **Weekend Cuts**
-  **Account Cut on Same Day**
-  **Time Window**
-  **Timely Restoral Process**
-  **CLEC to CLEC UNE-P to UNE-L Migrations**
-  **CLEC to CLEC UNE-L to UNE-L Migrations**
-  **Email Notification**
-  **DSO EELS**
-  **Scheduler**
-  **Notification System**
-  **Shorter Intervals**

> Mass Migration Conversion Process

- > CLEC submits spreadsheet**
- > CLEC gets UNE-L rate when submits spreadsheet**
- > BellSouth handles migration**
- > BellSouth handles number port**

> Snipe Hunt



> CLEC Inconsistencies

- > Gillan uses different trigger criteria for Georgia and Florida proceedings**
- > Gillan uses different trigger criteria in Georgia presentation than what he used in Georgia direct testimony**
- > Gillan describes differences in criteria as a “housekeeping error”**

1 in Georgia, please? Do you have that in front of you? I
2 think it's on the screen.

3 A (Witness Gillan) Yes.

4 Q And these are the six criteria that were contained
5 in your prefiled direct testimony to this Commission,
6 correct?

7 A (Witness Gillan) Yes. There's a slight
8 difference between them. The slides were unfortunately
9 created off of the Florida testimony and as we indicated in
10 Florida, we had refined the criteria by the time we filed in
11 Georgia and all subsequent states, combining two of these
12 criteria and incorporating onto the list a criteria that we
13 have discussed extensively in the Florida testimony, but
14 which had not actually been incorporated in the list. So
15 it's sort of a housekeeping detail that we shifted between
16 Florida and Georgia.

17 Q Okay. Well, let's look at lines 8 through 10 of
18 your Georgia testimony. This is the third criteria on your
19 list and that is "The self-provisioning trigger candidate
20 should provide services exhibiting a ubiquity comparable to
21 UNE-P, within the area chosen for analysis", correct?

22 A (Witness Gillan) Yes.

23 Q And would you agree with me that that criteria
24 does not appear on the list of the six that you identified
25 and discussed with the Commission this morning?

1 A (Witness Gillan) Well, it was not one of those
2 numbered criteria, that is correct.

3 Q Okay.

4 A (Witness Gillan) It's certainly one of the issues
5 that we discussed in the presentation, but it did not make
6 it as a listed criteria in that draft.

7 Q And if we could look at the -- let's look at lines
8 12 through 15, which is the fourth criteria that you
9 identified in your prefiled testimony. Now is it fair to
10 say that this is actually a combination of your third and
11 fourth criteria that were in your presentation this morning?

12 A (Witness Gillan) Yes, Mr. Ross, I'm sure you read
13 the testimony in Florida and you're well aware that we
14 combined those two and lifted the discussion of ubiquity out
15 of the text of the testimony and listed it as a criteria in
16 Georgia and all the other states.

17 Q So in your presentation this morning, to the
18 extent you represented to the Commission that criterias 3
19 and 4 were mutually -- or both had to be met, in your
20 testimony, you testified that it's an either/or proposition,
21 is that correct?

22 A (Witness Gillan) No, I don't think that's an
23 accurate statement. The testimony explains that the
24 recommendation is that the trigger must be relying on ILEC
25 analog loops and then as this points out, if the Commission

1 does choose to consider an intermodal alternative -- in
2 other words, if it chooses not to accept our recommendation
3 that it must be relying on the ILECs to provide the loops,
4 then it must meet these additional criteria as well. But
5 the recommendation is, as it was in the testimony, as it was
6 in the presentation, that we don't recommend the Commission
7 accept any trigger candidate that is not relying on ILEC
8 loops.

9 Q Okay, so your testimony here is that the
10 difference between your presentation this morning and as it
11 relates to the six criteria and the six criteria in your
12 prefiled testimony, was just a housekeeping error.

13 A (Witness Gillan) Yes, as we explained in
14 testimony that I'm sure you've read in Florida.

15 Q Actually, I'll be honest, Mr. Gillan, I wasn't in
16 Florida, I haven't read the Florida testimony, so I
17 apologize if I'm behind the curve on that one.

18 I do want to ask you some questions about a topic
19 that you also discussed in your presentation this morning,
20 which concerns pricing for elements that BellSouth must
21 provide under Section 271.

22 I believe you made the statement in your testimony
23 as well as again this morning that you believe TELRIC rules
24 fairly compensate BellSouth for local switching, is that
25 correct?

> The Six Self-Provisioning Switch Trigger Criteria

- > The self-provisioning trigger candidate's switch must not be "enterprise" switches.**
- > The self-provisioning trigger candidate must be actively providing voice service to mass market customers in the designated market, including residential customers, and must be likely to continue to do so.**
- > The self-provisioning trigger candidate should be relying on ILEC analog loops to connect the customer to its switch.**

> The Six Self-Provisioning Switch Trigger Criteria

- > If the self-provisioning trigger candidate provides an “intermodal service,” its service must be comparable to the LEC service in cost, quality, and maturity.**
- > The self-provisioning trigger candidate may not be affiliated with the LEC or other self-provisioning trigger candidates.**
- > The existence of the self-provisioning trigger candidate should be evidence of sustainable and broad-scale mass market competitive alternatives in the designated market.**

Docket No. 030851-TP
Direct Testimony of Joseph Gillan
On behalf of the Florida Competitive Carriers Association

1 switch-based CLECs to justify a “no impairment” finding in a market in *spite* of
2 the national finding of mass market switching impairment.

3
4 The self-provisioning trigger criteria can be organized into six categories. Before
5 a “trigger candidate” can be found to qualify as satisfying the self-provisioning
6 trigger, the criteria contained in the TRO for each of these categories must be
7 satisfied. The six categories are as follows:

8
9 * The self-provisioning trigger candidate’s switches must not be
10 “enterprise” switches.

11
12 * The self-provisioning trigger candidate must be actively providing
13 voice service to mass market customers in the designated market,
14 including residential customers, and is likely to continue to do so.

15
16 * The self-provisioning trigger candidate should be relying on ILEC
17 analog loops to connect the customer to its switch.

18
19 * If the self-provisioning trigger candidate provides an “intermodal
20 service,” its service must be comparable to the ILEC service in
21 cost, quality, and maturity.

Docket No. 030851-TP
Direct Testimony of Joseph Gillan
On behalf of the Florida Competitive Carriers Association

1 * The self-provisioning trigger candidate may not be affiliated with
2 the ILEC or other self-provisioning trigger candidates.

3
4 * The existence of the self-provisioning trigger candidate should be
5 evidence of sustainable and broad-scale mass market competitive
6 alternatives in the designated market.

7
8 Only if each of these trigger criteria is met does a candidate qualify as one of the
9 three self-provisioning providers necessary to satisfy the FCC's self-provisioning
10 trigger.

11
12 **Criteria 1: Enterprise Switches Do Not Qualify as Triggers**

13
14 **Q. You identify the first criterion as requiring that the self-provisioning trigger**
15 **candidate's switches must be "mass market" switches rather than**
16 **"enterprise" switches. Please describe the FCC's discussion of this criterion**
17 **in the TRO.**

18
19 **A. The analytical importance of the distinction between the "mass market" and**
20 **"enterprise market" pervades the TRO. The FCC found that, even based on the**
21 **limited record before it, there was a clear distinction between the mass market and**
22 **the enterprise market, both in terms of customer profile and the state of CLEC**
23 **switch deployment.**

- 1 * The self-provisioning trigger candidate's switches must be "mass
2 market," not "enterprise" switches.
3
- 4 * The self-provisioning trigger candidate must be actively providing
5 voice service to mass market customers in the designated market,
6 including residential customers, and is likely to continue to do so.
7
- 8 * The self-provisioning trigger candidate should provide services
9 exhibiting a ubiquity comparable to UNE-P within the area chosen
10 for the analysis.
11
- 12 * The self-provisioning trigger candidate should be relying on ILEC
13 analog loops to connect the customer to its switch or, if a claimed
14 "intermodal" alternative, its service must be comparable to the
15 ILEC service in cost, quality, and maturity.
16
- 17 * The self-provisioning trigger candidate may not be affiliated with
18 the ILEC or other self-provisioning trigger candidates.
19
- 20 * The existence of the self-provisioning trigger candidate should be
21 evidence of sustainable and broad-scale mass market competitive
22 alternatives in the designated market.
23

> CLEC Inconsistencies

- > Gillan admits that his embedded cost of switching calculation of \$3.84 does not take into account cost of capital, shared and common costs, costs for taxes and uncollectibles, and costs associated with land and buildings.**
- > Gillan admits that in Georgia, unlike in Florida, he did not include in contribution percentage rate.**
- > Gillan admits that, had he included such a percentage for Georgia, it would have been approximately 8.6%.**

1 showed what your -- that which your witness so blithely
2 maintains, that these rates are somehow below cost.

3 Q When you said that you could throw away your
4 testimony about embedded cost, do you want to withdraw that
5 part of your testimony?

6 A (Witness Gillan) Oh, no, let's talk about it.

7 Q Okay, you look at page 14 of your surrebuttal,
8 please.

9 A (Witness Gillan) Yes.

10 Q And I'd like to focus on the table, Table 1 at the
11 very top of the testimony. Now here's where you purport to
12 calculate the average embedded cost of switching and you
13 calculate a cost of \$3.84 per line; do you see that?

14 A (Witness Gillan) Yes.

15 Q And based upon the data you presented here, you
16 considered two categories of cost from ARMIS data -- central
17 office switching expense and a calculation of the
18 depreciation associated with that central office switching
19 expense, correct?

20 A (Witness Gillan) Yes, I was trying to determine
21 whether or not -- I was trying to estimate what your direct
22 embedded cost was, to see if there was contribution to the
23 other costs in the rates you are paid for that.

24 Q Now did -- what kind of expenses are in the ARMIS
25 category of central office switching expense?

1 A (Witness Gillan) Costs associated with switching
2 and the collection of billing, call detail records are among
3 the categories I recall.

4 Q Okay. Is that it or do you recall anything else?

5 A (Witness Gillan) I didn't go into it, I don't
6 recall -- I have it printed out, but I didn't bring it.

7 Q And the depreciation you calculated is just the
8 depreciation associated with the central office switching
9 expense that's identified on this chart, correct?

10 A (Witness Gillan) Well, depending on how you go
11 about calculating it, it's very possible that it's a
12 dramatic over-statement of the depreciation associated with
13 your central office switches. The problem is in ARMIS,
14 there is no category that's reported that says depreciation
15 on central office switches. There's a category of plant in
16 service and there's a category total switching plant in
17 service and there's a total plant in service, which is what
18 I used to allocate the depreciation cost to this category.
19 But part of what happens is that your switches are being
20 depreciated and on an embedded cost basis are becoming
21 cheaper each and every year through accumulated
22 depreciation.

23 In BellSouth Georgia's situation, I think it's 60
24 percent of your switch investment was made prior to 1990, so
25 much of that switch investment is already written off and

1 fully recovered, yet I'm continuing to allocate it here.

2 And I think it's actually 80 percent was before 1996.

3 So it's very -- in fact, it's impossible looking
4 at ARMIS data to come up with a precise estimate of what
5 amount of your annual depreciation should be attributed to
6 switching. This was the measure I used that gave me the
7 highest level. There are other ones that give much, much
8 lower levels that may be more accurate.

9 Q Do you know for certain that the depreciation
10 associated with BellSouth switching is, in your words, over-
11 stated, using this number?

12 A (Witness Gillan) No, not for certain. Quite
13 frankly, the only real important number on this is the \$4.00
14 a month that you appear to be telling this Commission you
15 would rather have an empty switch port that sits idle with
16 no revenue than have \$4.00 a month coming in the door. I
17 was just trying to figure out if there was any conceivable
18 basis for that to be a reasonable position from a business
19 perspective. This wouldn't really answer that anyway,
20 because it's an embedded cost study and as you're well
21 aware, both your economists and myself and any economist in
22 these proceedings would indicate that forward looking costs
23 are the appropriate standard to use.

24 Q We'll get to the 4.17 in just a minute. I want to
25 focus on the \$3.84 average embedded cost that you've

1 calculated. Would you agree with me that there's no cost of
2 capital reflected in that \$3.84?

3 A (Witness Gillan) Yes.

4 Q Will you agree that there's no cost of -- any
5 portion of shared and common costs in that \$3.84?

6 A (Witness Gillan) Yes.

7 Q Would you agree that there's no cost for taxes or
8 uncollectibles in that \$3.84?

9 A (Witness Gillan) Yes.

10 Q In fact, you didn't even take into account costs
11 associated with land and buildings in which the central
12 office switching equipment is actually located, did you?

13 A (Witness Gillan) No. But again, the question is
14 -- that land and building is going to sit there, why do you
15 want \$4.00 less a month?

16 Q Well, let me ask it this way -- part of your
17 testimony is, I believe, that the difference between what
18 you calculate as average TELRIC and what you calculate an
19 average embedded cost should be, I think as you've described
20 it, contribution that BellSouth would enjoy; is that
21 correct?

22 A (Witness Gillan) It's contribution to go to cover
23 those other costs that you referred to. It's actually an
24 under-statement of it because again, what you would really
25 want to compare it to is the incremental cost of that switch

1 port in order to really look at what is the contribution to
2 your other costs that comes about by having the revenue
3 stream of \$4.00 a month as estimated here.

4 Q Let's go to your surrebuttal in Florida, if we
5 can.

6 A (Witness Gillan) Do you have a copy of my
7 surrebuttal in Florida?

8 Q Yes, James will pop that right up, I think it's
9 page 13 of your surrebuttal in Florida.

10 Now can we agree that this is basically the same
11 calculation you did in Georgia except you added a figure in
12 Florida that you didn't have in Georgia, did you see that?
13 That's that last line.

14 A (Witness Gillan) Yes. Although, this is actually
15 from -- an errata was issued to this page. But for purposes
16 of this discussion, I don't think it's necessary to dwell on
17 that.

18 Q Okay. The last line that you have here, the 130
19 percent contribution from the price in Florida, which I
20 gather you calculate is the difference between the average
21 SCAT rate and the average embedded cost, correct?

22 A (Witness Gillan) Yes.

23 Q Now did you do a similar contribution calculation
24 for switching in Georgia?

25 A (Witness Gillan) No, actually I wiped out this

1 spreadsheet and was creating a new spreadsheet when I did
2 Georgia.

3 Q Would you agree with me, subject to check, that if
4 you did this same calculation for Georgia, looking at the
5 table that you present in your testimony, that the
6 contribution would be 33 cents or roughly 8.6 percent?

7 A (Witness Gillan) Yes, under this -- I'm assuming
8 you got the math right, Mr. Ross. Under this estimate of
9 your depreciation, that's what it would be. Under the lower
10 estimated depreciation I looked at, it was closer to 60
11 percent.

12 Q It's not your position that 33 cents is sufficient
13 to cover BellSouth's cost of capital, BellSouth's shared and
14 common costs, BellSouth's taxes uncollectibles or land and
15 buildings, is it?

16 A (Witness Gillan) No, because actually my position
17 is to cover all of those things appropriately, you deserve
18 compensation of \$4.17 a month, which is the cost-based rate
19 on a forward looking basis. In order to cover all those
20 costs appropriately, the TELRIC standard captures each and
21 every one of those on a forward looking basis, which is the
22 appropriate basis to use.

23 The real point of my testimony is to keep pointing
24 out to the Commission that your position in this proceeding
25 fundamentally is you would rather have empty switch ports

Docket No.17749-U
Surrebuttal Testimony of Joseph Gillan
CompSouth

Table 1: BellSouth's Average Embedded Switching Cost

Cost Category	2002 ARMIS	Per Line
Central Office Switching Expense	\$56,313	\$1.29
Switching Share of Depreciation/Amortization ²⁰	\$111,719	\$2.55
Average Embedded Cost	\$168,032	\$3.84
Average TELRIC ²¹		\$4.17

As the table above shows, the TELRIC-based UNE rates (which BellSouth has agreed, at least in principle, are comparable to TSLRIC) are above the estimate of its embedded cost.²² Under a variety of standards – TELRIC, TSLRIC and embedded cost – the existing UNE rates for local switching are clearly just and reasonable. Consequently, although the FCC has modified the pricing standard from a strictly TELRIC-based standard, to a potentially more liberal “just and reasonable” standard, there is ample evidence that the existing rates are justified under both.²³

Q. Do BellSouth's proposed section 271 rates comply with the just and reasonable standard?

²⁰ ARMIS does not separately assign depreciation cost to switching. However, Telephone Plant in Service (TPIS) is separately reported for central office switching and the ratio of Switching TPIS to Total TPIS was used to estimate that portion of BellSouth's 2002 depreciation allocated to switching.

²¹ Source: BellSouth Exhibit JAR-5.

²² The average TELRIC revenue in Table 1 does not include revenues obtained from the CLEC for billing records, although the embedded cost category does include costs associated with recording call detail. As a result, a more precise comparison would likely show revenues exceeding costs by a larger amount than shown in the table.

²³ I remind the Commission that the Act itself defines the cost-based rates of section 252(d)(1), which the FCC requires satisfy its TELRIC-rules, are just and reasonable.

Docket No. 030851-TP
Surrebuttal Testimony of Joseph Gillan
On Behalf of the Florida Competitive Carriers Association

Cross-subsidization is measured using forward-looking incremental costs, not historical accounting costs.... Even reasonable allocations of fixed costs or common overhead costs to a service have no role in a subsidy test...¹⁴

The fact that TELRIC includes an allocation of shared fixed and common costs means that the TELRIC-based UNE price would be too high for a price floor.¹⁵

Thus, even BellSouth agrees that TELRIC-based UNE rates for local switching are not being subsidized. Moreover, there is ample evidence that BellSouth's UNE switching rates are substantially above its embedded costs, as reflected in its ARMIS filings:

Table 2: BellSouth's Average Embedded Switching Cost

Cost Category	2002 ARMIS	Per Line
Central Office Switching Expense	\$75,463	\$1.06
Switching Share of Depreciation/Amortization ¹⁶	\$160,708	\$2.25
Average Embedded Cost	\$236,171	\$3.31
Average SGAT Rate (including usage) ¹⁷		\$7.62
Contribution from SGAT Based Price		130%

¹⁴ Rebuttal Testimony of William Taylor on behalf of BellSouth, Docket Nos. 02-0119-TP and 020578-TP, filed November 25, 2002 ("Taylor Rebuttal"), page 18.

¹⁵ Taylor Rebuttal, Page 6.

¹⁶ ARMIS does not separately assign depreciation cost to switching. However, Telephone Plant in Service (TPIS) is separately reported for central office switching and the ratio of Switching TPIS to Total TPIS was used to estimate that portion of BellSouth's 2002 depreciation that can be allocated to switching.

¹⁷ Average TELRIC rate is calculated based on BellSouth's average usage per line (as reported in ARMIS 43-04, Dial Equipment Minutes of Use) of 3,238 minutes per line.

> CLEC Position



In response to a question regarding CLECs negotiating market based rates, Gillan states that “[W]e don’t have time to mess around with failed negotiations with you.”

1 you the benefit of the doubt, 400 percent over cost for the
2 recurring rate and I think it's 10,000 percent over cost on
3 the non-recurring rate. You use the term market rate, but
4 the issue, since there is no market, is what is a just and
5 reasonable rate. And those rate increases and those price
6 increases can't be considered just and reasonable by any
7 just and reasonable man or woman.

8 Q Mr. Magness, if I heard him correctly this
9 afternoon, represented that his clients, and I assume he is
10 referring to CompSouth members, were unable to negotiate a
11 rate lower than the \$7.00 switching additive that BellSouth
12 is proposing as the market-based rate. Did I -- did you hear
13 that?

14 A (Witness Gillan) I didn't hear that. Quite
15 frankly, our position is that that -- we don't have time to
16 mess around with failed negotiations with you. We want the
17 Commission to set -- to review and set what the just and
18 reasonable rate is for switching, because that switching
19 rate needs to exist in order for these companies to continue
20 to provide competitive services to well over half a million
21 Georgia consumers today, and without the Commission stepping
22 in and performing the role of arbiter of that dispute,
23 there's a chance that a significant rate increase will be
24 imposed on these companies and because if it's imposed on
25 these companies, on the customers that have decided to take

> CLEC Inconsistencies

- > Lichtenburg states BellSouth should have collaborated on its batch hot cut process like other RBOCs but admits that MCI is not supporting any other RBOC's batch cut process.**
- > Lichtenburg also admits that MCI has never raised a hot cut issue in the Florida commission ongoing CLEC collaborative.**
- > Lichtenburg admits that MCI's position is that there is no manual hot cut process that can support UNE-L mass migration.**

1 prior to the commencement of the state impairment
2 proceedings, correct?

3 A (Witness Lichtenburg) That is correct. We felt
4 that during these proceedings we would learn more about the
5 process and that hopefully BellSouth would sit down with us
6 the way the other companies have done and that we wouldn't -
7 - we would have just been able to work through it the way we
8 try to work through things in a business to business
9 fashion. When we realized that couldn't happen, we decided
10 to get those change requests in.

11 Q Let's talk about that a little, Ms. Lichtenburg.
12 Your position, as you've explained to Commissioner Burgess,
13 is that BellSouth should have collaborated on its batch hot
14 cut process, right?

15 A (Witness Lichtenburg) Yes.

16 Q And you testified, I believe, just now and in your
17 prefiled testimony, that you've collaborated with Verizon,
18 SBC and Qwest, right?

19 A (Witness Lichtenburg) Yes.

20 Q And MCI is not supporting the batch hot cut
21 process with any of those ILECs in any state in the country,
22 is it?

23 A (Witness Lichtenburg) Yes and no. What we did
24 was we started out with a list of issues. And let me use
25 SBC as an example because I think it was the biggest issue

1 left. It was well over 100 issues. And all the CLECs and
2 SBC met together and we narrowed that list of issues down
3 until there are some 40 or perhaps fewer than those and
4 those are the subject now of review by commissions. But we
5 were able to get it much closer to a workable process and
6 now we'll see what comes out the other end of the sausage
7 maker.

8 Q So just to make sure I understand. Your position
9 is that the collaboration resulted in 40 issues that you're
10 litigating with SBC, correct?

11 A (Witness Lichtenburg) I believe it was 40, I
12 didn't count them up. And not all CLECs are litigating all
13 issues.

14 Q But MCI is?

15 A (Witness Lichtenburg) No, I don't believe that's
16 the case. There are some issues that MCI said fine.

17 Q Now the Florida Commission has had an ongoing CLEC
18 collaborative since 2002, hasn't it?

19 A (Witness Lichtenburg) Yes, it has.

20 Q And the purpose of that collaborative is for CLECs
21 to raise operational issues that it has with BellSouth,
22 correct?

23 A (Witness Lichtenburg) Yes.

24 Q MCI never raised a hot cut issue at that
25 collaborative, did it?

1 A (Witness Lichtenburg) That is correct, MCI did
2 not. We have been focusing on the issues of CLEC to CLEC
3 migrations and CSRs since we are not issuing any hot cut
4 orders for the residential and very small business market in
5 Florida.

6 Q And Ms. Lichtenburg, isn't it true in fact that
7 even with all the collaboration in the world, there is no
8 manual process that MCI contends could support UNE-L mass
9 migration, correct?

10 A (Witness Lichtenburg) Correct, at the volumes
11 that we believe are going to happen if we lose UNE-P. It's
12 a scalability issue. We think, however, that once the new
13 software is developed in SBC, in Qwest, in Verizon, and
14 potentially once the changes that BellSouth is proposing are
15 understood and made, that we might be able to really figure
16 out if this process is possible.

17 Q Let me follow up on two things you said. With
18 respect to a process being able to support mass market
19 volumes, MCI's definition of scalability, in other words,
20 the scale necessary to support mass market volumes, is the
21 equivalent to the volumes we see today with UNE-P,
22 correct?

23 A (Witness Lichtenburg) Yes, assuming that there is
24 no UNE-P, we want to serve those customers and they're going
25 to have to be put onto our switches somehow.

> CLEC Inconsistencies

> Webber states that MCI can't serve mass market customers in Georgia without access to unbundled local switching.

> Notwithstanding this statement, he states that BST cannot handle the volume of UNE-L orders that will be required if UNE-P is eliminated.

> Notwithstanding his testimony that MCI can only serve mass market customers via UNE-P, he included MCI's UNE-P lines in determining the volume of hot cuts that would be required if UNE-P is eliminated.

> Webber admits that his calculation is overstated if MCI does not use UNE-L.

> Webber attempts to explain away the inconsistency with the "magic wand" theory - that is, he states that his calculations were based on the "supposition that somehow the economic and operational barriers are removed such that we can rely on use of the UNE-L development - deployment strategy to support the whole mass market."

1 Prior to reviewing BellSouth's hot cut process or
2 critiquing it, did you review any data regarding the number
3 of hot cuts performed by BellSouth?

4 A (Witness Webber) By the time I filed my Georgia
5 testimony?

6 Q Yes.

7 A (Witness Webber) Yes.

8 Q What about review of BellSouth's performance data
9 before filing your testimony?

10 A (Witness Webber) Again, although I don't think
11 it's necessarily relevant, by the time I filed my Georgia
12 testimony, I had. And I say it's not relevant simply
13 because of the fact that the performance data is based upon
14 extraordinarily low volumes in the 700 or 800 hot cuts per
15 month territory, as opposed to something like 100,000 hot
16 cuts per month in this state of Georgia should UNE-P go
17 away. So the performance data at those lower volumes wasn't
18 necessarily relevant to whether the process is going to work
19 on a going forward basis at much larger volumes.

20 Q Would you agree with me that MCI is one of the
21 largest, if not the largest UNE-P provider in Georgia?

22 A (Witness Webber) Out of the 50 or so UNE-P
23 providers that are here, it's one of the larger ones, I
24 can't say that it's the largest and I'm not quite sure how
25 many fit above it.

1 Q You state in your direct testimony that MCI is
2 currently dependent on unbundled local switching to serve
3 mass market customers in Georgia, is that correct?

4 A (Witness Webber) I believe that's true.

5 Q And on page 11 of your direct testimony, lines 28
6 through 29 and following on page 12, you state that MCI
7 cannot offer services to most of its current or embedded
8 base of customers absent access to unbundled local
9 switching; is that accurate?

10 A (Witness Webber) I hate to do this to you, can
11 you give me the line references again?

12 Q Sure. It's lines 28 through 29 and then follows
13 on on page 12, line 1.

14 A (Witness Webber) Give me just a second.

15 Q Sure.

16 A (Witness Webber) Okay, I see that. Okay.

17 Q. Now, if MCI can't serve mass market customers
18 without UNE-P, where will the volume of hot cuts come from
19 that you say BellSouth can't handle if UNE-P is eliminated?

20 A (Witness Webber) The supposition made in my
21 testimony is that somehow the economic and operational
22 barriers are removed such that we can rely on use of the
23 UNE-L development -- deployment strategy to support the
24 whole mass market. So, in other words, we wave the Magic
25 Wand, if you will, and assume that UNE-P is replaced by UNE-

1 L. And in that circumstance, then, the question is whether
2 the processes that are in place are capable of supporting
3 today's mass market volumes, but, instead of in a UNE-P
4 environment, in a UNE-L environment.

5 Q. Yes or no, Mr. Webber. If UNE-P is eliminated,
6 MCI will stop serving mass market customers in Georgia?

7 A (Witness Webber) I can't say for certain.

8 Q. But it is your testimony that they can't serve
9 mass market customers in Georgia without unbundled local
10 switching; is that right?

11 A (Witness Webber) If they're to use the UNE-L
12 strategy, that's correct.

13 Q. Now, you made certain calculations in your direct
14 testimony regarding the number of hot cuts that would be
15 required if UNE-P is eliminated; is that right?

16 A (Witness Webber) May I have a page reference,
17 please.

18 Q. Sure. It's your direct testimony at Page 20,
19 Lines 18 to 21. Page 20, Lines 18 through 21.

20 A (Witness Webber) That's a portion of that
21 discussion. And I would note that the discussion continues
22 on to the next half a page or so.

23 Q. Sure and just to complete the circle, you
24 believe that the total number of hot cuts on a monthly basis
25 would be about 94,000; is that right?

1 A (Witness Webber) Not necessarily. Let me explain
2 this a little bit here. Ultimately what I did was I took
3 the analysis that Mr. Hartley and Mr. Ainsworth put together
4 in their testimonies, and I modified it so that it would
5 account for Georgia-specific hot cut volumes as opposed to
6 regional hot cut volumes. So, in that regard, it's their
7 analysis modified on a state-specific as opposed to an
8 analysis I created out of whole cloth.

9 Q. Okay, I'm a little confused. Are you or are you
10 not suggesting to this Commission that a potential outcome
11 of removing UNE-P is hot cuts totally approximately 94,000 a
12 month?

13 A (Witness Webber) Based upon the analyses that Mr.
14 Ainsworth and Mr. Hartley did, these numbers and these
15 approximate volumes are what that result would be.

16 Q. Okay.

17 A (Witness Webber) My expectation, frankly, is that
18 they would be a little bit higher. But we're talking about
19 ballparks here. This is roughly 100,000, and we're seeing
20 roughly 7- or 800 per month right now. The difference in
21 that last five or ten percent frankly is not relevant. The
22 issue at hand is whether we can scale from something like 7-
23 or 800 to something like 100,000 per month in the state.

24 Q. Did you include MCI's UNE-P lines when you made
25 this calculation?

1 A (Witness Webber) It's based upon what the
2 imbedded UNE-P base would be at that time. And to the
3 extent that MCI is still operating in the state, then yes,
4 that would be true.

5 Q. So if MCI decides not to go to UNE-L if UNE-P is
6 eliminated, your calculation would be overstated; is that
7 right?

8 A (Witness Webber) Unless they've walked away from
9 the state, somebody bought their base and did the
10 conversion, I suppose that's correct.

11 Q. Okay.

12 A (Witness Webber) Again, the hypothetical here is
13 that all of the business which is currently supported by
14 UNE-P, waving that Magic Wand, is now supported by UNE-L.
15 And that would include MCI and AT&T and 50 other carriers,
16 some of whom are represented here today.

17 Q. Okay. On Page 21, Lines 8 to 14 in your direct
18 testimony, you talk about churn; is that correct?

19 A (Witness Webber) Yes, I see that.

20 Q. Where did you get the churn rate of 6.25 percent a
21 month?

22 A (Witness Webber) As I state in my testimony, that
23 comes from Dr. Bryant's analyses.

24 Q. Did you provide any analysis or input into
25 calculating this churn rate?

PUBLIC DISCLOSURE VERSION**Direct Testimony of James Webber
GAPUC Case No. 17749-U**

transport and related services. To the extent that issues pertaining to such performance limit CLECs' ability to provide services, back stop measures and dynamic impairment findings should be implemented expeditiously.

4. EELs

The Commission should implement EEL provisioning guidelines that assure that CLECs are able to purchase DSO level loops in combination with transport, multiplexing, and concentration as described in this testimony. Moreover, such EELs should be integrated into the Mass Market Hot Cut and Transitional Batch Hot Cut Processes.

Q. TO WHAT EXTENT DOES MCI UTILIZE UNE-P IN GEORGIA?

A. MCI is currently serving REDACTED end-user lines via the UNE-P in Georgia from REDACTED separate wire-centers.

Q. IS MCI CURRENTLY ABLE TO SERVE ITS EMBEDDED CUSTOMER BASE THROUGH A UNE-L STRATEGY?

A. Setting aside questions regarding the economic practicability of serving residential and smaller business customers via UNE loops in the state of Georgia - a topic Dr. Bryant addresses in his testimony - MCI cannot currently reach its customer base throughout most of the state. As is clearly demonstrated on the map contained in Exhibit JDW-2, MCI's local customers are spread throughout the entire state and the company is only collocated in a few wire-centers. Without collocation or some other method of physically accessing customer loops - such as EELs coupled with a seamless hot cut process capable of handling large volumes of both inbound and outbound customer movement - MCI cannot offer services to most of its current,

PUBLIC DISCLOSURE VERSION**Direct Testimony of James Webber
GAPUC Case No. 17749-U**

1 or embedded, base of customers absent access to unbundled local switching. MCI
2 is currently dependent on ULS to serve the mass market in Georgia.

3
4 **III. BELLSOUTH'S HOT CUT PROCESSES ARE INADEQUATE AND LEAD**
5 **TO IMPAIRMENT**

6
7 **Q. THERE ARE A NUMBER OF ISSUES IN THIS PROCEEDING RELATED**
8 **TO HOT CUTS. PLEASE DESCRIBE THE HOT CUT PROCESS AND**
9 **EXPLAIN WHY THESE ISSUES ARE IMPORTANT.**

10 A. The term "hot cut" describes the near-simultaneous disconnection of a working
11 loop from a port on one carrier's switch and the reconnection of that loop to a
12 port on a different carrier's switch, without any significant out-of-service period.
13 A hot cut must also include some type of notification made to the appropriate
14 number administrator informing the administrator that the customer's telephone
15 number is now assigned to a different carrier, thereby allowing the customer to
16 receive incoming calls at his or her existing telephone number. In a hot-cut
17 scenario, regardless of whose switch the customer is moving from, and to, the
18 ILEC must perform two manual wiring activities at the main distributing frame
19 ("MDF"): (1) pre-wiring and (2) the actual loop cutover.

20
21 During the pre-wiring stage the technician places a jumper between the CLEC tie
22 facility connecting the CLEC's collocation cage to the ILEC central office, and the
23 customer loop. The jumper is terminated at the tie facility but not at the loop side.
24 When the cut is scheduled to begin, the jumper that is connected to the loop side

> BellSouth's BACE Model

- > Staihr criticizes the BACE model for not being consistent with real world CLEC experience. He admits, however, that today, CLECs have access to UNE-P and that the availability of UNE-P affects a CLEC's decision to deploy switches.**

> BellSouth's BACE Model

- > Observation: BACE Model seems to single-handedly disprove evidence we have from real-world experience.**
- > Problem: In any business case, results depend on reasonableness of inputs, accuracy of calculations, and realistic assumptions.**
- > Finding: BACE Model fails on all these levels.**
 - Not surprising that model's result run counter to what we actually observe.**

1 Q. The other input you talked about this morning was
2 the total market share input. And I think you said changing
3 that one little thing from 15 percent to 10 percent. Do you
4 recall that?

5 A (Witness Staihr) Yes, I do.

6 Q. Okay. That one little thing was reducing the CLEC
7 market share by a third; correct?

8 A (Witness Staihr) Yes, it was.

9 Q. Okay. And cutting BellSouth's total -- or, excuse
10 me, cutting the CLEC's, in the BACE model's total market
11 share by a third, did not cause a single market to go from
12 NPV positive to NPV negative; correct?

13 A (Witness Staihr) No. Nor would we expect that it
14 would, given the massively understated costs that Mr. Farrar
15 had talked about in his part of the presentation.

16 Q. Now, you made the observation, the beginning of
17 your presentation, that the results of the BACE model differ
18 from actual deployment of switches by CLECs; do you recall
19 that? I think it was the top of your Slide 50, Page 50.

20 A (Witness Staihr) Let me just make sure I have got
21 the same thing you have.

22 I believe what it says there, it seems to disprove
23 evidence that we have from real world experience.

24 Q. Right. Now, in the real world, at least today,
25 CLECs have access to UNE-P; correct?

1 A (Witness Staihr) For now, yes, sir.

2 Q. Okay. And in your deposition, do you recall
3 testifying that the availability of UNE-P affects CLEC's
4 choices of whether to deploy its own switch?

5 A (Witness Staihr) If you have a specific cite in
6 my definition that you could refer me.

7 Q. Let me ask you this question. Is it your
8 testimony as an economist that the availability of UNE-P
9 affects CLEC's choices of whether or not to deploy their own
10 switches?

11 A (Witness Staihr) It's my testimony that the
12 availability of UNE-P could affect a CLEC's choice.

13 Q. And could it effect that choice if it could
14 provide services using UNE-P more cheaply than it could
15 provide service using its own switch, even if it's own
16 switch -- it could turn a profit using its own switch?

17 A (Witness Staihr) Well, again, the answer is it
18 could, depending about on a million other things, including
19 revenues, market share, other cost, etc. The answer is it
20 could.

21 Q. If we held all those other things constant -- the
22 availability of UNE-P, assuming that the CLEC had UNE-P
23 available to it -- and assume that it could deploy its one
24 switch and make money, but it could make more money if it
25 used UNE-P. In that case, wouldn't the availability of UNE-

1 P affect the CLECs decision about whether or not to deploy
2 its own switch?

3 A (Witness Staihr) If you're holding constant about
4 a million things, yes.

5 Q. Now, the BACE model assesses whether economic
6 barriers to CLEC entry exists, and if they do, to what
7 extent; correct?

8 A (Witness Staihr) No, the BACE model attempts to.

9 Q. Okay. And the consideration of economic barriers
10 is part of the potential deployment test set out in the TRO;
11 correct?

12 A (Witness Staihr) Yes. The base models designed
13 to answer the questions of whether or not an entrant can
14 successfully deploy in a potential scenario.

15 Q. Okay. And it's definition, the potential
16 deployment test seeks to measure what potentially would
17 happen, not what is actually occurring in real world
18 experience today; correct?

19 A (Witness Staihr) That's correct.

20 Q. Okay. So then can we agree, then, by definition,
21 the results of the potential deployment test will not be
22 equal to actual real world experience concerning deployment?

23 A (Witness Staihr) Not necessarily. We can't agree
24 with that at all. Because if it is potentially possible to
25 use UNE-L to serve mass market customers profitably, and we

> CLEC Inconsistencies

- > Staihr recommended a cost of capital for use in BAGE model of 14.43%.**
- > Staihr admits, however, that Farrar, in calculating the economic crossover point for a CLEC, used a cost of capital of 13.07%.**
- > Staihr further admits that Billingsley proposed a cost of capital for a CLEC of 13.09%.**

1 riskier investment than ILECs, and that the cost of capital
2 used for the CLEC should be higher than for the ILEC;
3 correct?

4 A (Witness Staihr) Yes, sir.

5 Q. Okay. And are you aware that this Commission last
6 year approved a cost of capital for BellSouth of 9.27
7 percent?

8 A (Witness Staihr) I'm not familiar with this
9 Commission's decisions, sir, but I'll believe that subject
10 to check. Sure.

11 Q. You recommend a cost of capital for use in the
12 BACE for the CLEC of 14.43 percent; correct?

13 A (Witness Staihr) Yes, I do.

14 Q. That's more than 50 percent higher than this
15 Commission's approved cost of capital for BellSouth;
16 correct?

17 A (Witness Staihr) And because this Commission's
18 approved cost of capital for BellSouth is an ILEC, we would
19 certainly expect that the cost of capital for a CLEC should
20 be higher.

21 Q. Would you -- is it your testimony that it has to
22 be 56 percent higher?

23 A (Witness Staihr) Not necessarily.

24 Q. Now, Mr. Farrar, in calculating the economic
25 crossover point for a CLEC that you end up recommending in

> CLEC Inconsistencies

- > Turner never reviewed any carrier affidavits regarding the cost of backhauling traffic before filing his testimony stating that the cost of backhauling prohibited CLECs from using UNE-L.**
- > Turner admits that he never reviewed the affidavits prior to testifying before the GPSC.**

1 the scope of this proceeding. But the scope of the analysis
2 that I provided to the Commission was evaluating the costs
3 of impairment related providing mass market services.

4 Q. Now, both of these affidavits were filed with the
5 Commission before this proceeding -- before certainly court
6 today. And I believe in the case of Knology, it was filed
7 on the 27th day of January, and in the case of USLEC,
8 February 12.

9 Did you consider any of this information in
10 formulating your opinions and your model concerning the
11 costs of back haul?

12 A (Witness Turner) Well, my testimony, if you're
13 referring to these being on January 27th, I believe my
14 testimony was filed on December 23rd, where I would have
15 provided this Commission with the cost of back haul. So I
16 could not have considered them in that time frame. And then
17 my surrebuttal, of course, was filed on February 18th, but I
18 was responding at that point to rebuttal testimony that was
19 filed by BellSouth.

20 Q. Let me ask you this. When you filed any of your
21 testimony, direct or surrebuttal, were you aware of this
22 evidence that had been filed with the Commission concerning
23 the extent to which CLECs are, in fact, able to incur the
24 cost of back haul and serve their customers in competing
25 with BellSouth?

1 A (Witness Turner) Well, I could not have been
2 aware of it for my direct because it wasn't available. But
3 I did not -- I was not aware of this when I filed
4 surrebuttal.

5 Q. And were you aware of it prior to taking the stand
6 today? Did any of the lawyers for CompSouth or for AT&T or
7 for MCI bring to your attention the fact that these carriers
8 had submitted affidavits indicated that they are not
9 impaired by virtue of the costs of back haul?

10 A (Witness Turner) I knew generally that affidavits
11 had been filed by a variety of carriers. I had not reviewed
12 them personally.

13 MR. ROSS: Mr. Chairman, no further questions for
14 the witness. And I believe BellSouth's case is complete.

15 CHAIRMAN EVERETT: Thank you. You're excused,
16 please, sir.

17 At this time we'll have our redirect.

18 MR. HENRY: Mr. Chairman, Mickey Henry with AT&T.
19 Just a couple of questions.

20 REDIRECT EXAMINATION

21 BY MR. HENRY:

22 Q. You just were discussing two firms. One was US
23 LEC that provides DS-1 and above service. You indicated
24 that they would not have been in your analysis; correct?

25 A (Witness Turner) No, they would not have been.

1 A. As I indicated earlier, UNE-P is part of a natural market transition whose duration
 2 is unknown because it is in the hands of customers themselves. The POTS
 3 market is shrinking, as customers increasingly desire services with higher
 4 bandwidth (for data) or different features. As the market changes, carriers that
 5 rely on UNE-P (to one degree or another) will have to evolve in response.

6

7 There are two directions where the evolution appears most likely. The first will

As I indicated earlier, UNE-P is part of a natural market transition whose duration is unknown because it is in the hands of customers themselves. The POTS market is shrinking, as customers increasingly desire services with higher bandwidth (for data) or different features. As the market changes, carriers that rely on UNE-P (to one degree or another) will have to evolve in response.

19 voice services in a packet format. While this innovation is clearly exciting, it is
 20 still unclear how quickly (and how deeply) the service will fundamentally change
 21 customer options. In the near term, for those customers with high-speed data
 22 connections, VOIP will likely provide inexpensive alternatives. But it is still
 23 unclear how VOIP will really change local market conditions. Critically, to use

> Consistency Does Not Count

YES

... I mean

NO

> CLECs' Inconsistent Arguments

> Can they serve every customer?

THEN

Direct Testimony of Gregory Follensbee

AT&T has the ability to connect virtually any qualifying local exchange customer in Tennessee to one of these switches through AT&T's dedicated access services.

Pg. 41

Currently, AT&T has a menu of options that are capable of economically connecting end users very far away from a switch.

Pg. 21

NOW

Rebuttal Testimony of James Bradbury

The purpose...was to demonstrate that the potential coverage of AT&T's switches was comparable to that of a BellSouth tandem switch...

Pg. 17

It does not address the process or factors used in determining if it is economic to deploy network equipment to actually serve the customers ...

Pg. 17

CLEC